HANDY BOOK

FOR

SHIPOWNERS AND MASTERS.

A HANDY BOOK

FOR

SHIPOWNERS & MASTERS.

(SEVENTH EDITION.)

BY

H. HOLMAN,

M.A. (Camb.); Common Law Scholar, I.T.;
Barrister-at-Law.

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PREFACE.

To ALL concerned in the adjustment of maritime disputes there are admirable text books available—text books such as no other country possesses. In relation to the carriage of goods by sea there are Abbott on Merchant Shipping, Carver's Carriage by Sea and Scrutton on Charter Parties; as regards insurance, Arnould's Marine Insurance is, and is likely to remain, the leading authority, whilst Marsden on Collisions and Kennedy's Law of Civil Salvage thoroughly cover their respective fields. There is no call for any further text book but for the use of masters and officers and of those shipowners who have no opportunity to consult the text books a more or less orderly outline of maritime law and practice accompanied by certain essential forms and data seems desirable.

Among the entries in the Associations with which the writer is connected are craft of every description. One or more of them take holiday seekers full of buoyant expectations for cruises on summer days and return them possessed of a patriotism hitherto unknown; at the other extreme there are Atlantic liners and between the two poles lies the great phalanx of cargo steamers with which these pages are almost entirely concerned. Every year is marked by tangible progress towards perfection in the construction, the management and the navigation of ships but there are still certain errors, difficulties and risks of a commonplace character which it is hoped these pages will do something to avoid.

Experience goes to show that of the heaviest losses many can be traced back to causes trivial and hardly blameworthy in themselves. The necessity for care and vigilance and for rigid observance of well known rules was never so great as to-day. In the *Invermore* a master leaves two essential words out of a bill of lading and a loss of £13,000 results; in the *Winkfield* a rivet an eighth of an inch long gives out at a critical moment and damage to the extent of £18,000 has to be paid for. Mistakes will continue to be made and accidents will still happen but the area should year by year contract as intelligence and experience grow.

H. H.

1, LLOYDS AVENUE, LONDON, E.C.,
1*st March*, 1911.

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SECTION I.

Chapter I.

THE SHIP.

The mercantile sea going tonnage of the world is, in round figures, 42,000,000 tons made up of 37,000,000 steam and 5,000,000 sail.

The ownership of the steam tonnage was for the most part made up in 1909 as follows:—

Flag.	WOOD & COMPOSITE.		IRON.		STEEL.		TOTAL.	
	No.	Gross Tonnage.	No.	Gross Tonnage.	No.	Gross Tonnage.	No.	Gross Tonnage.
United Kingdom	93	15,743	1,641	1,041,203	6,685	15,415,656	8,419	16,472,602
British Colonies.....	375	102,248	275	198,629	689	929,235	1,339	1,230,112
Total	468	117,991	1,916	1,239,832	7,374	16,344,891	9,758	17,702,714
American Sea	426	221,412	185	304,164	495	1,092,932	1,106	1,618,508
(U.S.) Northern Lakes	9	17,464	23	27,633	506	1,960,710	538	2,005,807
Danish	12	3,258	122	82,403	424	591,437	558	677,098
Dutch	6	803	60	37,838	437	865,895	503	904,536
French	18	3,176	246	289,318	620	1,153,482	884	1,445,976
German	2	318	220	153,666	1,586	3,735,067	1,808	3,889,046
Japanese	323	84,807	134	223,995	404	842,056	861	1,150,858
Norwegian.....	104	38,483	318	244,552	870	1,105,388	1,292	1,388,423
Swedish	132	25,604	382	282,712	446	465,972	960	774,288

During 1909 526 vessels (exclusive of war ships) of 991,066 tons gross were launched in the U.K., this output being the lowest for twelve years with the exception of 1908. Practically the whole of the tonnage launched was built of steel, and over 98 per cent. was steam

tonnage. The sailing tonnage of the U.K. decreased by 111,000 tons in 1909.

The average tonnage of steamers launched in the U.K. during 1909 was 2,092 tons, and of these vessels 16 are capable of steaming at a speed of 17 knots or more. The fastest was the turbine yacht "Winchester" (26 knots). The fastest merchant vessels are 5 steamers intended for Channel service (2 turbine and 3 twin screw vessels) all of which attain to 22 knots.

The building output of the world, other than the U.K., for 1909 was 537 vessels of 610,991 tons, a decrease of 292,000 tons as compared with 1908. Among foreign countries the leading places are held by the U.S.A. (209,604 tons), Germany (128,696 tons), and Holland (59,106 tons).

Classification.

The great bulk of British tonnage is classed by Lloyd's Register, an institution founded about the year 1770, and having its head office at 71, Fenchurch Street, London.

Classification at Lloyd's is either (1) general; (2) for special trades; or (3) for vessels of special type "with freeboard."

(1) General.—Steel vessels built in accordance with the Society's Rules and Regulations, with alternative arrangements, equivalent thereto, are classed 100 A or 90 A so long as they are found, upon careful annual and periodical survey, to be in a fit and efficient condition for the safe conveyance of dry and perishable cargoes. Vessels which do not fulfil the requirements for the 100 A class, but which exceed the requirements for the 90 A class, may sometimes be classed 95 A if the Committee approve. These numerals prefixed to the letter A indicate grades of classification.

(2) Special Trades.—Vessels which are intended for special trades or purposes, and which are considered by the Committee to be fit for the contemplated employment, are classed A without a numeral prefixed, provided all the details of the proposed scantlings and arrangements are submitted to the Committee and approved by them and the rules otherwise complied with. In these cases to the class A will be affixed notations showing the particular trades or purposes for which the vessels are intended.

(3) Vessels Classed "With Freeboard."—In the cases of awning-decked steamers and Channel steamers a minimum freeboard has to be submitted to and approved by the Committee. In such cases the words "with freeboard" is inserted under the character of class and in the Register Book.

In all cases in which it is intended to build vessels for classification in Lloyd's Register, sketches of 'midship section and profile, with deck and other plans must first be submitted by the builders, for the approval of the Committee. Vessels intended for classification in the Register Book have to be built under the Society's special survey, and the fact of this special survey's requirements having been satisfied is indicated in the Register thus—✠. During the progress of construction it is the duty of the surveyors to examine the material and workmanship in order to ensure that the requirements of the Society and the approved plans are satisfactorily carried out. Engines and boilers of steam vessels intended for classification or already classed in the Register Book, must be constructed under the Society's special survey. When the vessel's equipment is in good and efficient condition and otherwise in accordance with the requirements of the Society the figure 1 is placed after the character assigned to the vessel.

Periodic Special Surveys.

To enable steel vessels to retain the characters assigned to them in the Register Book, they have to be subjected to periodical special surveys designated No. 1, No. 2, and No. 3. These surveys become due, in the cases of vessels classed from 100 A to 90 A inclusive, at 4 years, 8 years, and 12 years respectively from the date of building, and subsequently at the expiration of the periods from the date recorded in the Register Book of the previous special survey No. 3. If a vessel is at any time submitted to special survey No. 3 before being 12 years old, the special surveys subsequently required will be Nos. 1, 2 and 3, at 4 years, 8 years, and 12 years respectively, from the date recorded in the Register Book of such special survey No. 3.

Vessels classed A for special purposes are required to be subjected to special surveys Nos. 1, 2 and 3, at 3 years, 6 years, and 9 years respectively from the date of building, and at the expiration of like periods from the date recorded in the Register Book of the previous special survey No. 3.

In cases in which it may suit the convenience of owners, the special surveys Nos. 1 and 2 may be held at any time within 12 months previous to the dates at which they severally become due, and the special survey No. 3 may be held at any time before the date at which it becomes due.

In cases in which it is inconvenient to owners to fulfil all the requirements of either of the periodical special surveys at the requisite time part only of the survey need be carried out at the time, provided the remainder of the survey be completed within 12 months at the date from the date at which it became due. In such a case the surveyors must give the owners written notice of the parts not surveyed and the facts are also reported to the

Committee. Vessels which have satisfactorily passed any of the periodical special surveys have notations made against their names in the Register Book, indicating the survey and date at which it was held.

If upon a vessel being surveyed, material reduction is found to have taken place in plating, angles, etc., the classification is reconsidered by the Committee.

Additions to Register, 1909.

During 1909 536 new vessels of 831,023 tons were classed by Lloyd's Register. Of these vessels 447 of 819,389 tons are steamers, and 89 of 11,634 tons are sailing vessels. Only 1.4 per cent. of the whole tonnage classed is sail as distinguished from steam.

Vessels lost, broken up, etc., during 1909 account for the removal of 267,942 tons from Lloyd's Register in that year, and in the same period no less than 364,718 tons were sold to foreigners, and for that reason removed.

There are two other large classification societies—viz., Bureau Veritas and the British Corporation, whose classifications and rules are recognised by Lloyd's underwriters. The effect of these societies and their extremely clever scantling tables has resulted in Lloyd's Registry abandoning its inflexible rules as to the thicknesses of the material, and the result has been that the distribution of material in modern vessels is on a very scientific basis, with the result that a lighter and stronger vessel is now being built with a greater cargo capacity.

The rules in both these societies as to submitting plans and 'midship sections before construction and as to annual surveys for classification follow on the lines of Lloyd's Registry. They also assign freeboards as do Lloyd's Registry on rules approved by the Board of Trade.

The three above-mentioned societies have most stringent rules for boiler and machinery surveys.

Seaworthiness.

The first duty of a shipowner relative to a merchant is to provide a ship "tight, staunch, strong and every way fitted for the voyage." So runs the usual charter obligation, and even apart from these express terms, the law of England implies an obligation on the part of those who carry goods by sea or on other navigable waters to provide a vessel or craft reasonably fit for the service for which it is engaged. A shipowner can only escape from liability for damage to cargo, &c., resulting from unseaworthiness by proof of definite agreement on the part of the merchant to exempt him (the shipowner) from the consequences of unseaworthiness. If there is any ambiguity about the exceptions clauses in C/P or B/L the shipowner cannot secure relief from liability.

A ship may be unseaworthy not only by reason of some structural defect, but by reason of having a master or officers without the necessary qualifications, or being undermanned, or being short of bunker coals, provisions, stores, or the necessary equipment. Further, the warranty of seaworthiness is an absolute one, and in case of latent defect developing in, *e.g.*, a crank shaft or piston rod, the shipowner is liable in damages unless he is exempt by the terms of the contract of carriage.

Illustration.

The Glenfruin (1885).

The screw shaft of the s.s. *Glenfruin* owing to a latent defect broke whilst the s.s. was in course of a voyage with cargo on board. Salvage services were rendered to her, and her cargo was called upon to pay and did pay its proportion of salvage. Thereafter the cargo owners claimed in an action at law to recover the amount so paid from the shipowners on the ground that the salvage was rendered necessary by initial unseaworthiness of the s.s., *Held* that the cargo owners were entitled to recover.

Where there is an express warranty the shipowner not only undertakes to do all that he reasonably can to make the ship fit, but warrants that she is fit, and apart

from exceptions clauses, he is liable for all loss or damage to cargo arising from any cause other than the act of God, the King's enemies, and fire (not the result of negligence or intention).

The warranty applies to the commencement of the voyage only, and is not a continuing obligation, unless the C/P so provides. "Seaworthiness" is now well understood to mean that measure of fitness which the particular voyage or particular stage of the voyage requires. A vessel seaworthy for port and even for loading in port may be, without any breach of warranty whilst in port, unseaworthy for the voyage. But if she is put to sea in that state the warranty is broken. It is a question of fact in each particular case.

Illustrations.

(a) The s.s. *Pentland* loaded a cargo of coal at Newport (Mon.) and proceeded down the river in charge of a properly qualified pilot. Steam was up on one boiler only when the voyage began and half way down the river to the sea there was no pressure of steam available on the second boiler. Whilst making about five knots an hour and rounding a bend in the river under port helm the *Pentland* grounded and failed to come off under her own steam on that high water. On the succeeding ebb tide she broke her back and the cargo was totally lost. In an action by the cargo owners to recover for the loss of cargo on the allegation of unseaworthiness at the commencement of the voyage. *Held* by Sir F. Jeune (assisted by Trinity Masters) that the *Pentland* was seaworthy for the stage of the voyage she was upon at the time of her loss and judgment was given in favour of the shipowners. *The Pentland* (1899).

(b) A seaman (Hedley) whilst serving as A.B. on the s.s. *Prodano* on the run round to Cardiff from London fell overboard in rough weather and was drowned. At the point where Hedley fell, abreast of a hatchway, the stanchions and rails had been removed to facilitate the working of cargo in London and had not been replaced. The only protection at this point was a bulwark about 2-ft. 6-in. high. The widow of Hedley claimed for the loss of her husband on two grounds: (1) That the s.s. was within the meaning of the M.S. Act, 1876, "unseaworthy"; and (2) that the captain was negligent and that the doctrine of "common employment" did not apply to a master and his crew. In the King's Bench the case came before Grantham, J., and a jury, with the result that judgment was entered for the plaintiff for 175*l*. The Court of Appeal and later the House of Lords set aside the judgment on the ground that there was no evidence to go to the jury of the shipowners' liability. The negligence of the master was never in dispute, but he was held to be in "common employment," and as to the allegation of "unseaworthiness" Lord Herschell said:—"The *Prodano* was in all respects efficiently equipped. The fault was in not making use of the equipment with which she had been furnished. Neglect properly to use the appliances on board a vessel well equipped and furnished does not involve a breach of the obligation resting upon an owner to keep his vessel in a seaworthy condition for the voyage." *The Prodano* (1894).

(c) The s.s. *Powis* was chartered to load a cargo of 2,830 tons of iron ore at Seriphos for Middlesbro'. The C/P as usual warranted the steamer tight, staunch and strong and every way fitted for the voyage and contained a full negligence clause. The *Powis* sailed from Seriphos on 20th June, 1907, but *The Powis* (1908).

foundered about five hours afterwards in fine weather, ship and cargo being totally lost. Various theories were propounded as explaining the loss, the principal being: (1) That the plating of the steamer was damaged in the course of the loading by heavy lumps of ore as they were shot into the holds; (2) that the steamer touched the rocky bottom of the harbour in the course of the loading or after sailing. There was no positive evidence in support of either theory. Action was brought in the Commercial Court to recover the value of the cargo from the shipowners, and on the trial before Bray, J., and a special jury judgment was given in favour of the cargo owners. In the absence of any evidence reasonably pointing to damage from one or other of the causes alleged by the shipowners, Bray, J., directed the jury that the shipowners had not satisfied the burden of proof resting upon them to demonstrate a loss by a peril of the sea or other excepted peril.

In this relation Lord Blackburn, in *Burges* v. *Wickham* (1863), said that "the warranty of seaworthiness means that the vessel is to be put into that state in which she ought to be put when engaged in such a transaction as that contemplated—that degree of fitness to encounter the perils which it would be usual and prudent to require at the commencement of the voyage. . . . I think that on such an adventure as this, viz., sending a river steamer across the ocean the warranty of seaworthiness was complied with if as much was done to make her fit for the voyage as was, in such adventures, usual and proper, though it might not make her as fit for the voyage as would have been usual and proper if the adventure had been that of sending out an ordinary sea-going vessel."

A shipowner, whose ship is unseaworthy, at the commencement of the voyage, though liable in damages to the cargo owner for injury to the cargo caused directly by that unseaworthiness is not liable for injury caused to other portions of the cargo, not as the result of that unseaworthiness, but by a peril of the sea excepted in the C/P —that is to say, if unseaworthiness in the carrying ship is relied on by the cargo owner, he must prove that it was the cause of the damage.

Illustration.

The Europa (1907).

By C/P dated 2nd March, 1906, the s.s. *Europa* was fixed to load a full and complete cargo of sugar in bags at Stettin for Liverpool On the voyage heavy weather was encountered and damage resulted, but this damage was increased by the fact that a closet pipe on the port side forward was defective whereby

water escaped into the hold. Further, it appeared that four old scupper holes in the 'tween deck waterways, from which the pipes to the bilges had been detached, were not properly closed. The cargo owners claimed £103 6s. 6d. as damages. In the County Court at Liverpool the shipowner was held liable for the whole amount on the ground that on proof of unseaworthiness the shipowner could not rely upon defences otherwise open to him under the C/P. The Divisional Court in Admiralty set aside this judgment and limited the damages to the loss directly occasioned to the cargo owner by the unseaworthiness.

In the case of a towage contract the tugowner, in the absence of express agreement to the contrary, impliedly undertakes to send a tug reasonably fit for the purpose for which it is hired, properly equipped and with a sufficient supply of coals on board.

Although a ship may be in all respects seaworthy relatively to safe navigation, yet she may be unseaworthy relative to the cargo, and assuredly is so if not in fact reasonably equipped and fitted to ensure the safe carriage of the cargo contemplated by the C/P. For instance, a ship which had just discharged a cargo of case oil and had a strong smell or taint in the holds, would be "unseaworthy" relative to a cargo of flour or other perishable goods. Again, a ship which had recently discharged cattle afflicted with foot-and-mouth disease would be "unseaworthy" relative to other cattle; and a ship loading wool would be unseaworthy if insufficiently ballasted. Nice questions sometimes arise as to whether the failure to make use of available appliances constitutes unseaworthiness.

Illustrations.

(*a*) A parcel of wheat was shipped on a steamer bound from New York to Glasgow, and was damaged on the voyage in consequence of a port-hole in the 'tween decks having been improperly fastened before sailing on the voyage. The port-hole could not be got at from inside the ship after the cargo had been stowed. In an action to recover the damage to the cargo, *Held* the shipowners liable, the steamer not having sailed in a fit state to encounter the ordinary sea perils. *Steel* v. *State Line* (1877).

(*b*) A cargo of grain was shipped on a steamer at Odessa for Hull, and was seriously damaged on the voyage in consequence of a quantity of sea water getting into the hold, during heavy weather, through a sounding pipe, the brass cap of which was alleged to have been mislaid or stolen at the loading port. The ship's officers asserted the cap was stolen at Gibraltar whilst coaling. The receivers brought an action to recover their damage and got judgment in the County Court at Hull. *Held* by Sir F. Jeune and Barnes J., on appeal, that the ss. was not unseaworthy; and even assuming the cap was missing at Odessa and that the failure of the master to have another cap fitted was negligence, this was covered by the negligence clause. *The Fonar* (1897).

A charterer is under no obligation to load cargo in an unseaworthy ship; and, on the other hand, a goods owner is never liable to pay a general average contribution where the outlay or sacrifice has been occasioned by the unseaworthiness of the ship.

Board of Trade Returns for 1909.

The gross tonnage of all vessels registered under the Merchant Shipping Act, 1894, in the U.K., Isle of Man and Channel Islands on 31st December, 1909, was as follows:—

9,392	sailing ships of	1,407,469 tons g.r.
11,797	steamships of	16,994,732 ,,

In the matter of steamship building the following ports are pre-eminent:—

England	The Hartlepools	in 1909 built	46,512	tons g.r.
	The Newcastle District	,,	116,771	,,
	South Shields	,,	18,253	,,
	Stockton	,,	30,115	,,
	Sunderland	,,	93,735	,,
Scotland	Glasgow	,,	161,671	,,
	Greenock	,,	50,733	,,
	Port Glasgow	,,	100,753	,,

Of the U.K. ports London had the largest entry for foreign trade in 1909, viz., 10,373 vessels of 11,605,698 tons; whilst Cardiff ranks for the largest clearance, viz., 6,139 vessels of 8,888,756 tons as contrasted with a clearance at London of 7,694 vessels of 8,622,316 tons.

Chapter II.

THE SHIPMASTER: His Authority and Responsibilities,

The qualities which secure success in a shipmaster are many and varied; but two are vital and essential, viz., strength and foresight. He must be physically strong and sound, otherwise his personality cannot in the long run command the necessary degree of confidence and willingness to obey on the part of his subordinates. He must be morally strong, or failure in emergency is sure to result with, perhaps, disastrous consequences. No amount of experience will compensate for lack of nerve and will power and self restraint.

Upon the skill, the honesty, the wise discretion of a master, the shipowner relies for the carrying out of business transactions in which the property at risk is frequently of huge value. The master is charged with the safety of the ship and cargo; in his hands are the lives of passengers and crew. His position demands the exercise of all reasonable care and skill in navigation, of at least ordinary care and ability in the transaction of business connected with his ship, and the constant use of patience and consideration in his dealings with those under his command or entrusted to his care.

A master's authority.

"The authority of a master of a ship is very large, and extends to all acts that are usual and necessary for the use and employment of the ship; but is subject to several well-known limitations. He may make contracts for the hire of the ship, but cannot vary that which the owner has made. He may take up money in foreign ports, and under certain circumstances at home, for necessary disbursements, and

for repairs, and bind the owners for repayment; but his authority is limited by the necessity of the case, and he cannot make them responsible for money not actually necessary for those purposes, although he may pretend that it is. He may make contracts to carry goods on freight, but cannot bind his owners to carry freight free." (Per Jervis, C. J.; *Grant* v. *Norway* (1851.) Shipowning as a business has seen vast developments since 1851, and it is rare indeed for the master of a cargo steamer to be called upon to enter into freight contracts.

It is, however, substantially true to say that a master has a general authority to do all that he might reasonably assume his owner would certainly do on his own behalf if he were present at any particular time and place; or to use the words of a most eminent judge, "whatever is fit and proper for the service on which a vessel is engaged, whatever the owner of that vessel as a prudent man would have ordered if present at the time," it is within the scope of a master's authority to do or direct, as the case may be.

How authority may be limited.

Express instructions will necessarily vary the extent of the authority which would otherwise be implied: and a master's authority to act in cases of emergency and in matters outside the ordinary routine management and navigation of his ship is in general subject to the primary duty of communicating with, and getting instructions from, his owners or their agents whenever this is practicable.

Authority: (1) As to repairs, &c.

Only such repairs can be ordered, and such bunkers, stores and provisions procured by a master as are, strictly speaking, necessary to make his ship reasonably and properly fit to enter upon and continue in the employment assigned to her by the owners. Whatever must necessarily be done to make a ship seaworthy, a master has implied authority to do. If a master enters into a contract

which is neither necessary nor beneficial to the ship he renders himself personally responsible without recourse over as against his owners.

(2) As to raising money for ship's use.

Where necessary, a master may raise money on his personal security, or the credit of his owners for lawful purposes connected with the ship. If credit is entirely wanting and cannot be secured through the ordinary channels and there is a present necessity for funds in order that the ship may be put in a position to prosecute her voyage, he may pledge the ship or the freight, or both. This is done by means of a bottomry bond, which gives the holder a maritime lien upon the ship and/or the freight, the bond being conditioned upon the subsequent arrival of the ship at her destination.

If the ship and freight constitute an insufficient security, a master may, in case of utter necessity, and when the interests of the cargo owner require it, pledge the cargo either alone, by means of a respondentia bond, or together with ship and freight by a bottomry bond (*a*). A master must not, however, sacrifice the ship to the cargo or the cargo to the ship. He has no authority to raise money by a mortgage of his ship or by an assignment of the freight.

(3) As to selling ship and/or cargo.

The sale of a ship by the master could only be justified under extraordinary circumstances. In these days it can rarely happen that a master has to determine whether the circumstances are such as to justify him in selling either ship or cargo, and such a course should not be even considered until every possible effort has been made to save the ship, and there is no longer any reasonable prospect of ever getting ship or cargo to their destination.

Where, however, after the occurrence of any kind of maritime disaster it is found on examination that any part of the cargo, if carried forward, would on its arrival be

(*a*) See Appendix.

either worthless or unmerchantable, a master is justified in negotiating a sale at an intermediate port (*b*). To sell any portion of a cargo for the mere purpose of raising funds could only be justified where every other means had been tried and failure experienced.

(4) As to transhipment.

Where a ship puts into an intermediate port disabled, and it becomes necessary to discharge the cargo, the master may elect whether to re-ship it after repair or tranship it pending repair so as to earn the freight: he must re-ship if he can do so in a reasonable time, but otherwise he may, though he is not bound to, arrange for transhipment. If the cargo owner voluntarily takes delivery of his cargo at an intermediate port he may be liable for *pro rata* freight, but as a general rule no freight is payable until final delivery at the port or place of destination.

(5) As to ship's business.

In foreign ports a master, in the absence of any duly authorised agent of his owner, has authority to transact all business connected with the ship, to settle freight accounts, to settle a claim for demurrage on the charter basis, and accept bills of exchange in respect of amounts due. It has been held in the Scotch courts that a master has no authority to abandon a claim for demurrage, though he may give the charterers additional lay-days in return for some distinct advantage to the ship. A master is bound to act upon the lawful instructions of his owner's duly authorised agent, and in so far as he complies therewith he cannot he held responsible though such instructions are in fact improper. Yet a master is never bound to act upon instructions or adopt any line of action which he knows, or ought to know, to be unlawful or lacking in good faith.

(*b*) "Not merely is a power given, but a duty is cast on the master in many cases of accident and emergency to act for the safety of the cargo in such manner as may be best under the circumstances in which it may be placed; and as a correlative right he is entitled to charge its owner with the expenses properly incurred in so doing." (Abbott on Shipping.)

Illustration.

A master, by the instructions of the ship's agents at the loading port, signed certain Bs/L, which had been drawn up by such agents, and dated by them so as to make it appear that the cargo was shipped prior to a shipment date named in a contract for a sale of the cargo. The ante-dating was discovered by the receivers at the port of discharge, and as the result of litigation between the shipowners and the receivers, the former were held liable in damages. After protracted litigation between the shipowners and the master, the House of Lords held that the master was liable to his owners for the amount paid by them to the receivers, and that such amount could be set off against a claim by the master for disbursements. *Stumore v. Breen* (1885).

(6) As to salvage.

As a preliminary to salvage services the master has implied authority to enter into an agreement for a fixed amount payable in case of success, or may sign a salvage agreement on Lloyds' form with an agreement for arbitration attached, or may leave the question of remuneration an entirely open one to be determined by agreement or action hereafter. In the Azov, Black Sea, and Sea of Marmora, Lloyds' form is commonly in use, and its use might well be extended. Generally speaking, it is unwise and inexpedient for a master to agree a lump sum, if only for the reason that the master has no authority whatever to bind the cargo owner thereby. A master's agreement to pay a specific amount will not, however, be set aside by a Court unless it is shown to be grossly exorbitant or, on the other hand, so small as to be inequitable to the salvor.

(7) Signing Bs/L.

Every master of a ship has *prima facie* authority to sign Bs/L on behalf of his owners, but he has no authority to sign for goods not on board. The following passage is extracted from an authoritative judgment :—

"The question here is whether the master of a ship signing a B/L for goods which have never been shipped is to be considered as the agent of the owner in that behalf so as to make the latter responsible? With regard to goods put on board, he may sign a B/L and acknowledge the nature and quality and condition of the goods. *But the very nature of a B/L shows that it ought not to be signed until goods are on board*, for it begins by describing them as '*shipped*.' The master had clearly no real authority to sign Bs/L unless the goods had been shipped; nor can we discover any ground upon which a party taking a B/L by indorsement would be justified in assuming that he had authority to sign such bills, whether the goods were on board or not. The general usage gives notice

to all people that the authority of the captain to give Bs/L is limited to such goods as have been put on board; and a party taking a B/L either originally or by indorsement for goods which have never been put on board is bound to show some particular authority given to the master to sign it."

A master by his signature to clean Bs/L may make his owners liable in respect of damage to cargo, although the damage took place prior to shipment. The acknowledgment in the opening words of the B/L—"shipped in apparent good order and condition" presupposes an examination of the goods by the master or his qualified representative, and if a master negligently or deliberately signs for goods as being in apparent good order when they are not so in fact the shipowner is liable.

Illustrations.

The Virgen de Lourdes (1905).

(a) The s.s. *Virgen de Lourdes* loaded a cargo of sawn pitch pine timber at Port Arthur for London under a C/P dated 9th November, 1904, by which it was provided that Bs/L should be prepared by the shippers in the form endorsed on the charter and signed "quality and measure unknown," freight and all conditions, clauses and exceptions as per charter. The C/P to be subject to all the terms and provisions of the Harter Act, 1893. The timber shipped became badly stained and saturated with petroleum whilst awaiting shipment and still at shippers' risk at Port Arthur, and the damage was of such a character as that it must have been apparent to anyone who looked at it. The master, however, received the timber on board and signed three Bs/L for the timber as "Shipped in good order and condition." On the discharge in the Surrey Commercial Docks disputes arose as between the shippers and receivers, with the result that a claim was submitted to arbitration and the arbitrator awarded the receivers 572*l.* 12*s.* 0*d.* as damages, being the difference between the contract price of the timber and its depreciated value through being stained by petroleum. The receivers, however, claimed this amount from the shipowner as for breach of warranty contained in the Bs/L that the timber was shipped in good order and condition. On trial in the Commercial Court, (and confirmed on appeal) *Held* that the shipowners were liable on the ground that they were bound by the representation of the master in the B/L that the goods were shipped "in good order and condition" and that there being sufficient evidence that the receivers had altered their position and acted to their own prejudice on the faith of that representation the shipowners were estopped from denying the truth of it and were therefore liable in damages.

The Old Head (1909).

(b) The schooner *Old Head* was chartered to load a cargo of black oats from Waterford to Truro, and in pursuance of the C/P 1,360 barrels of oats were shipped between the 5th and 12th January, 1909. At the time of the shipment the master on several occasions complained of the heated and defective condition of the oats, but did not refuse to continue the loading, relying upon the shippers' assurances that the cargo would carry "all right." Bs/L were signed for the cargo as being "in good order and condition." The *Old Head* was delayed by bad weather on the voyage, but arrived at Truro on the 31st January and was discharged on 5th February. Action was taken by Trounson, Ltd., receivers, to recover 99*l.* 7*s.* 2*d.* in respect of the damage to cargo by heating, and on trial judgment was given against the ship for the full amount with costs on the ground that the master by his signature of a clean B/L for cargo which he knew or ought to have known to be in bad condition had caused prejudice to the receivers to this extent.

Where it is stipulated that the master shall "sign Bs/L as required by the charterer without prejudice to this C/P," or "as presented," the shippers may apparently insist on Bs/L being signed, whose terms are inconsistent with the C/P. In such case the Bs/L should be signed by the master under protest, and a formal protest be drawn up at the time. Unless the master's hands are tied by the clause "as required" or "as presented," he has the obligation resting on him to see that the conditions and exceptions in the Bs/L are in accord with the terms of the C/P for the voyage in question.

Master as agent for all concerned.

In ports of refuge or other places where neither shipowner nor merchant has an agent, and communication within a reasonable time is not practicable, the master acts as agent for all concerned, and he must in such cases use his best judgment in the interests of all parties (*a*). In the matter of jettison, a master has the fullest authority as agent for all concerned, and he may in the reasonable exercise of his discretion, determine the class and quantity of goods to be sacrificed. Though a jettison may not have been of the kind best calculated to save the property at risk, yet, if it appear that the master acted with due deliberation, under apparent necessity, neither he nor his owners are liable for a loss entailed to any third party by reason of such jettison.

Master's liabilities.

The liabilities of a master are practically unlimited, and are co-extensive with the loss occurring through any negligent or wrongful act upon his part. If, *e.g.*, without authority he deviates from the ordinary course of a voyage,

(*a*) "As the owner is bound, in order that his ship may be seaworthy, to put in command of her a master who is fully competent in respect of skill, care and honesty, so the master is bound to all whose interests are under his charge, as owners of the ship, or hirers of it, or as owners of the goods, or even as insurers of the ship, goods or freight, to use proper care and skill and entire integrity in the protection and preservation of their interests." (Parsons on Shipping.)

and loss or damage results, he is liable for the full amount of the loss thereby sustained by the shipowner; or if he signs Bs/L for goods not actually on board, and those Bs/L pass into the hands of third parties for good consideration, he is personally liable to them for all such loss as they may sustain by reason of the mis-statement of facts in such Bs/L. A master is personally liable under all contracts made by him relatively to the ship's employment, and on all contracts entered into by him in relation to repairs, bunker coals, and other necessaries for the ship, unless he expressly excepts his own liability at the time he enters into such contracts.

Illustration.

The Castlegate (1890).

In November, 1889, the owners of the Castlegate Steamship Co. let their steamer "Castlegate" to D. H. Morgan & Co. for 6 months, charterers providing and paying for all coals, port charges, etc. . . . the captain to be under the orders and directions of charterers as regards employment, agency or other arrangements. During the charter the s.s. sailed with a cargo for the Plate, and took coals at St. Vincent from Wilson, Sons & Co., who had previously contracted with D. H. Morgan & Co. for the supply of coals. Wilson, Sons & Co also paid the necessary port charges. On the homeward voyage coals were again supplied by the same firm, and in respect thereof the master gave a bill of exchange on D. H. Morgan & Co., signing same "V. Morgan, master." The bills not being met Wilson, Sons & Co., in May, 1890, instituted a cause of necessaries in Ireland against the vessel, her cargo and freight, and in order to avoid arrest the owners paid into Court a sufficient amount to satisfy the claim. The action was eventually dismissed. Wilson, Sons & Co., however, sued the master and recovered judgment against him upon the bills of exchange drawn by him which had been dishonoured, D. H. Morgan & Co. having meantime failed. The master instituted an action in the High Court of Admiralty of Ireland against ship and freight, claiming a lien thereon for recovery of the total amount of the bills of exchange (£1,391) as being disbursements properly made by him on account of the ship. *Held*, in the House of Lords, that the master had no lien upon the ship, the disbursements in question having been made, not on account of the shipowners, but on account of the charterers.

Many of the primary duties attaching to the office of a master are dealt with hereafter, and it is therefore unnecessary to refer to them here. Time-honoured warnings and oft repeated instructions form in some measure the substance of these pages, experience pointing conclusively to the view that all officers have not yet taken to heart even the most elementary rules of sound business.

Illustrations.

(a) A master, at the request of time charterers, signed Bs/L at Cardiff for Rio Janeiro. On the eve of sailing the master was instructed by the same people to go to Buenos Ayres, and did so, honestly accepting the assurance that the cargo belonged to the time charterers, and that they could do as they liked with it. On arrival at Buenos Ayres the cargo was claimed on behalf of the time charterers, and was delivered to them *without production of any B/L.* In fact, the Bs/L were in the hands of a Bank, which subsequently claimed and recovered from the shipowner the amount of the advances made upon the Bs/L, viz., £3,200. *The Boston City* (1895).

(b) In June, 1903, a cargo of rice was shipped on the barque *Invermore* at Rangoon under a C/P which relieved the shipowners from liability for loss or damage arising out of accidents of navigation, even when occasioned by the negligence of the shipowners' servants. The charterers requested the master to sign, and the master, in fact, signed Bs/L, which did not contain a negligence clause and merely stipulated "freight and all other conditions as per C/P." The barque and her cargo were totally lost by negligent navigation. On trial in the Admiralty Court the shipowners were held liable for £18,512, the value of the cargo. The charterers and master had both assumed that "all other conditions" covered the negligence clause, being in fact ignorant of the fact that an "exception" is not a "condition." *The Invermore* (1906).

Master and his Officers.

That there are very many ships afloat on which master, officers and engineers work together in a perfectly friendly manner and on terms of mutual helpfulness, goes for the saying. That there are others where this state of things does not exist is equally certain. Practically, the issue is with the master. Anything affecting the conduct and discipline of a crew as a whole must more or less seriously affect the interests of the shipowners. If it were usual with masters on the one hand to encourage their officers to take an active and intelligent interest in the navigation of the ship, and on the other hand to discipline their seamen to a proper sense of their duty and responsibility, there would be fewer disasters and far greater efficiency in carrying out the ship's engagements. All too often, for instance, it is the case that the second mate (though left in charge through night watches) knows little or nothing of the observations taken and of intended alterations in courses. It should be a master's pleasure as well as duty to make his officers fellow-labourers in the navigation of his ship, instructing them where they are weak, and giving them as much time for self-improvement as possible.

Plain Duties.

It need hardly be said that a master is bound to devote the whole of his time and attention to the ship and the interests of his owners: any trading on his own account, and any private profit secured by virtue of his position, are alike in breach of the confidence reposed in him by his employers. In individual cases a master may not get the measure of remuneration he really deserves, but the only safe and proper system is for a master to make full disclosure to his owners as to every rebate, allowance or commission he may secure. Whenever a favourable opportunity occurs, a master should communicate fully with his employers on matters which may affect their interests; and especially in case of any accident or delay happening, or likely to happen, to the ship, since, in the absence of such information, the position of the owner may be seriously prejudiced. A careful personal supervision of the system of stowage adopted and of the means used to secure good stowage would go far to avoid claims for damage to cargo.

In case of Sickness or Accident.

Generally speaking a master has no claim upon his owners for medical, hospital or repatriation expenses where the master by reason of sickness or disease is compelled to leave his vessel, whether at home or abroad. All expenses incurred by a master under such circumstances are for his own account, except it be in the case of a claim under Section 207 of the M.S. Act, 1894. It is here provided that "if the master or a seaman or apprentice belonging to a ship receives any hurt or injury in the service of the ship the expense of providing the necessary surgical and medical advice and attendance and medicine, and also the expense of the maintenance of the master, seaman or apprentice until he is cured or dies or is brought back, if shipped in the U.K., to a port in the U.K. and of his conveyance to the port, and in case of

death the expenses of his burial shall be defrayed by the owner of the ship."

Illustration.

The master of the schooner *Emily*, whilst trading between Liverpool and Falmouth, met with an accident whilst engaged in the service of the ship, with the result that his leg was seriously injured. The schooner put back to Liverpool, where the master was landed, and the master there incurred expenses in respect of surgical and medical advice and attendance rendered necessary by his injury. He claimed from the owner of the vessel the whole of the medical and surgical charges together with the cost of his maintenance until recovered. *Held* by Wills, J., that the owner was liable, but on appeal *held* that no part of the expenses incurred by the master subsequent to his landing in the U.K. were recoverable. *The Emily* (1901).

The misdemeanors created by the several Merchant Shipping Acts are numerous enough to test an even excellent memory, but indifference to authority and lack of discipline on board probably account for more prosecutions of officers than mere ignorance.

So far as the Courts of Summary Jurisdiction in this country are concerned the matters which most frequently give rise to trouble are:—Breaches of the regulations issued under the Factory Act applicable to the loading and discharge of vessels; failures to comply with the requirements of medical officers of health *re* crew's quarters, &c.; smoke nuisance in rivers, particularly the Mersey; throwing refuse overboard within the limits of a port; loading to the point of submerging marks; carrying an excessive or improper deck load, and smuggling by members of the crew.

Inquiries into breaches of discipline on the part of masters and officers steadily diminish in number year by year. In the three years 1905-1908 fewer inquiries were held than in the single year 1888.

The following is a brief summary of proceedings instituted under the Merchant Shipping Acts representing breaches of discipline committed by masters and officers of

British Merchant vessels at home and abroad during the year ended 30th June, 1908.

	Number of Investigations.	Masters.			Officers.			Total Number of Persons convicted.
		Masters' Certificates.		Censured or Admonished.	Officers' Certificates.		Censured or Admonished.	
		Cancelled.	Suspended		Cancelled.	Suspended		
1887-8	68	3	8	2	3	29	9	54
1888-9	85	2	9	6	4	35	5	61
1889-90	64	4	7	6	4	23	5	49
1905-6	41	1	7	—	2	13	6	29
1906-7	21	—	1	1	—	9	1	12
1907-8	22	—	4	1	1	8	7	21

Chapter III.

THE CREW: in relation to those in Authority.

By the common law the master is placed in a position of supreme authority over the crew, including the other officers of the ship. That authority and the relationship which exists between master and crew are, however, at the present time defined and limited by a large number of sections in the Merchant Shipping Acts, of such a complicated and elaborate nature as to baffle even the most experienced of captains. It is only possible to deal here with the law in some of its broader aspects and with those points which experience has shown lead most often to doubt and difficulty.

The contract with the crew.

The "ship's articles" constitute the contract between the master and the crew. The contract must be on the recognised form issued by the Board of Trade, and under this the crew agree with the master "to conduct themselves in an orderly, faithful, honest and sober manner, and to be at all times diligent in their respective duties and to be obedient to the lawful commands of the said master or of any person who shall lawfully succeed him and of their superior officers, in everything relating to the ship and the stores and the cargo thereof." This undertaking, it should be noted, covers not only the ordinary incidents and perils of a sea voyage, but it is also the duty of the crew without extra remuneration to protect the ship through all perils; and in the event of shipwreck to do their utmost to save both ship and cargo.

It is, moreover, part of the duty of members of the crew to assist, if called upon to do so, in the loading and discharge of the cargo. In most cases this is work

which is done by shore labour, but situations arise in which the crew may quite properly be called upon to perform this duty, and any refusal is an act of "wilful disobedience."

Illustration.

The Taunton. Four members of the crew refused to move a quantity of dunnage wood on the ground that it was part of the cargo. The men were prosecuted before the Barry Bench, and each was sentenced to 14 days' imprisonment for disobedience to lawful commands.

The length of the engagement.

The "voyage" clause in the articles specifies the length of the engagement and the place where the engagement terminates. The voyage clause at present in general use for crews engaged in the U.K. provides that the voyage shall end "at such port in the U.K. or Continent of Europe (within Home Trade limits) as may be required by the master." It has been held under this clause that the voyage is not brought to an end merely by reason of the final discharge of the homeward cargo, but the master can require the crew to proceed with the ship to a further port for loading, bunkering, etc., and in effect the "voyage" is only terminated when the loading for a fresh voyage has commenced.

Illustration.

The Scarsdale. A seaman signed articles with a voyage clause as above. The ship discharged the whole of her homeward cargo at Southampton and the seaman thereupon demanded his wages and discharge on the ground that the voyage was at an end, the master refused and required the man to go with the ship to Cardiff before giving him his discharge. *Held* that the master's contention was a right one he having the power under the articles of determining at what port within home limits the voyage was to end.

The seaman may, however, claim his discharge in any event as soon as the period of service inserted in the articles has expired, irrespective of where the ship may be at the time. The master should therefore be careful to see that the period of service inserted in the articles is of sufficient length to cover the voyage or series of voyages contemplated by the owners before the ship's

return to a "Home" port, for if the men become entitled to their discharge sooner, a higher rate of wages will usually be demanded for a renewal of the engagement, while those who elect to take their discharge will in all probability become "distressed seamen," and as such are, of course, entitled to repatriation at the owner's expense.

The engagement may also be terminated during its currency—

(*a*) By mutual consent of the master and the seaman.

In this case the master should see that the articles are properly endorsed, and, of course, there is no obligation upon the owners to pay repatriation expenses.

(*b*) By reason of the inability of the seaman to proceed further through illness.

(*c*) By the loss of the ship.

Hospital and medical expenses.

When the engagement is terminated abroad by reason of sickness or injury the owner is under obligation to pay the hospital and medical expenses of the seaman. In the Colonies and in some foreign countries the master may be required to make a deposit to cover such expenses, but nothing can be deducted from the man's wages, except where he is suffering from venereal disease or illness due to his own wilful act or misbehaviour. In such cases the balance of wages due may be applied towards the hospital and medical expenses.

Repatriation.

In cases of both (*b*) and (*c*) above, if the seaman subsequently becomes a "distressed" seaman within the meaning of the Act, he will, as a general rule, be entitled to repatriation. The question as to when and to what port repatriation may be claimed is one of considerable complexity. The following table shows clearly the exact obligation of the owners under the Merchant Shipping Acts:—

Table showing the "Proper Return Port" of a Seaman according to his Nationality and places of Engagement and Discharge.

NOTE.—If a seaman is discharged outside H.M.'s Dominions by his own consent during the currency of the agreement (*i.e.*, before articles are closed) he is not entitled to be sent to a proper Return Port, unless the ship is being transferred or disposed of at the Port at which he is discharged. (See Sect. 32 and 33.) It is also to be observed that it is permissible for the Master to come to an agreement with a seaman after he is discharged to send him to any convenient Port without reference to his specific rights under the Act.

Nationality of Seaman.	Port of Engagement.	Port of Discharge.	Alternative proper Return Ports. (1) *or* (2) *or* (3)			Method of providing for return in all cases.
BRITISH (except Lascars & Colonials)	Port in the U.K.	Port outside H.M.'s Dominions.	Port in U.K. at which engaged.	Any other Port in U.K.		(1) By placing the seaman on board a British ship which is in want of men to make up its complement and is bound to a proper Return Port.
,, ,, ...	Wherever engaged ...	Port in British Possession.	NOT ENTITLED TO REPATRIATION.			
,, ,, ...	Port outside U.K. ...	Port outside H.M.'s Dominions.	Port at which engaged.	Any Port in the U.K.		
COLONIAL ...	Port in the U.K.	Port outside H.M.'s Dominions.	Port at which engaged.	Any Port in British Possession to which he belongs.	A Port in the U.K.	*Or* (2) By providing the seaman with a passage in any ship, British or Foreign.
,, ,, ...	Wherever engaged ...	Port in a British Possession.	NOT ENTITLED TO REPATRIATION.			
... ...	Wherever engaged ...	Port in U.K.	,,	,, ,,	,,	*Or* (3) By providing the seaman with money for such a passage.
,, ...	Port outside U.K. ...	Port outside H.M.'s Dominions.	Port at which engaged.	Any Port in British Possession to which he belongs.	A Port in the U.K.	*Or* (4) By depositing with the proper authority such sum as that authority considers sufficient to defray the expenses of the seaman's return.
FOREIGN	Wherever engaged ...	Port in Country to which he belongs.	NOT ENTITLED TO REPATRIATION.			
,, ...	Wherever engaged	Port in British Possession.	NOT ENTITLED TO REPATRIATION.			
,, ...	Wherever engaged ...	Port in U.K.	NOT ENTITLED TO REPATRIATION.			
,, ...	Port in the U.K. ...	Port outside H.M.'s Dominions not in Country to which he belongs.	Port at which engaged.	Any Port in Country to which he belongs.		NOTE.—In cases (1), (2) and (3) the Master must in addition provide for the man's journey by land, if any. Whatever arrangement he makes must be endorsed on the articles.
,, ...	Port outside U.K. ...	,, ,,	NOT ENTITLED TO REPATRIATION.			
LASCARS ...	MUST BE RETURNED TO INDIA IN ALL CASES WHEN ON INDIAN ARTICLES.					

The master should see that consuls and other officials do not exceed their authority and arrange for repatriation when the seaman is not entitled to it. Moreover, in arranging for repatriation consuls are bound, in choosing the route, to have regard to the expense to the owners as well as to the convenience of the seaman.

Breaches of discipline.

A man becomes a deserter when he unjustifiably leaves a ship in the course of a voyage or engagement without having been discharged and with the intention of not returning. A deserter forfeits all the wages he has earned and any effects he may leave on board. In all cases of desertion, whether at home or abroad, the facts and all details of the desertion, including a list of the effects left on board and the wages due, should be fully noted in the official log. In cases of desertion abroad the master must obtain the certificate of the consul or shipping master endorsed on the articles, stating that the reason of the man being left behind is desertion, and the consul is, moreover, required to send a copy of the entry to the Registrar-General of Shipping. Particular care should be taken by the master to comply with these formalities, otherwise the deserter will almost inevitably become classed as a "distressed seaman," and as such the owner will become liable for repatriation expenses. At the end of the voyage the master must within 48 hours of the ship's arrival hand over to the superintendent the deserter's wages and effects (or the value thereof if they have been sold abroad by order of a consul), less all expenses incurred in engaging a substitute. These expenses must be set out in a "re-imbursement" account form provided by the Board of Trade, and should be supported by vouchers whenever possible. In this account may also be included the amount of wages paid to the substitute beyond what the deserter would have earned.

Desertions and failures to join.

When "blood money" has been paid at American ports, superintendents have instructions from the Board of Trade to allow the deduction of such an item, provided the master can show that he has made every effort to obtain a substitute, either through the consul or other sources, without the payment of a bonus. If, therefore, after making these efforts a substitute cannot be obtained without the payment of "blood money," the master should report this to the consul and get him to endorse upon the articles the fact that a bonus has had to be paid, and if possible an expression of opinion that a substitute could not be obtained without the payment of such a bonus.

Punishment of offences against discipline.

Sections 221 (b) and 225 of the Act of 1894 provide for the imposition of certain fines in cases of offences against discipline, but fines under these sections can only be enforced by a Court of Summary Jurisdiction. Section 228, however, affords a less cumbrous remedy, as under that section and by the Board of Trade form of articles certain offences against discipline, such as drunkenness, failure to join at the time named in the articles, striking a superior officer, etc., are made "breaches of articles," and as such fines may be deducted from wages without any application to a Court, the amount so deducted being paid over to the superintendent before whom the offender is discharged. The offence, however, in respect of which the deduction is made must always be entered in the official log at the time, signed by the master and mate, and the entry read over or a copy supplied to the offender. The amount of the fines which may be imposed are prescribed by the Board of Trade in the official form of articles. Attempts have been made by masters to insert clauses providing for heavier fines than those set out in the Board of Trade form, but by a

recent decision this has been held by the Courts to be illegal. In any event, the power to inflict fines affords a means of maintaining discipline and punishing wrong-doers, of which masters might make greater use than they do.

Naval Courts.

In cases of serious breaches of discipline a master should apply to the British consul at the port to summon a Naval Court, and the consul must do this in all cases which require immediate investigation. Such a Court may call witnesses and take evidence on oath. It has all the powers of a Court of Summary Jurisdiction, and can inflict fines and terms of imprisonment. Under Sections 67 and 68 of the M. S. Act, 1906, it can if necessary send the offenders home in custody to undergo a term of imprisonment at home. When a master has serious trouble with his crew he should not hesitate to ask for a Naval Court, for adequate punishment can thereby be more immediately inflicted and troublesome and refractory seamen got rid of.

It must be remembered that at all times the maintenance of proper discipline largely depends upon the firmness and wise discretion of the master in his treatment of the men under his command. Excessive harshness, on the one hand, and on the other too great a tendency to overlook offences and slackness, both lead to that grudging and half-hearted attention to duty on the vessel which has as its result those many preventable casualties referred to in the next chapter.

Chapter IV.

CASUALTIES AND THEIR CAUSES.

Avoidable disasters.

Of the serious shipping casualties occurring in any one year probably fifty per cent. would be avoided by the exercise of reasonable care and skill. This large proportion is mainly made up of casualties directly resulting from a want of proper caution rather than incapacity on the part of masters and officers in the management and navigation of ships. A relatively small proportion is due directly or indirectly to defects in the hull, machinery and equipment of ships for which the owners or their superintendents alone are responsible.

In this brief survey, those casualties only which are preventable by the exercise of ordinary care and skill on the part of masters, officers and crew will be referred to. Hurricanes and storm; lee-shores and icebergs; lightning and fire; floating wrecks and unmarked shoals, will claim their quota of disasters so long as ships sail the seas; but that significant and comprehensive term—Neglect—implying either an omission to use reasonable care or an unskilful performance of some specific duty is at the root of an immense aggregate loss of property at sea in each succeeding year.

How very serious a factor is negligence as causing or contributing to maritime disasters is obvious when the causes of strandings and collisions are investigated. A disregard of some well-known precaution, or disobedience to some equally well-known rule, will generally be found responsible for casualties of both kinds. The following return by the Board of Trade of the shipping casualties which occurred to merchant vessels registered in the U.K. (exclusive of yachts and fishing vessels) on or near the coast of the U.K. during the year

ending 30th June, 1908, or which were reported during the same period as having met with sea casualties abroad, shows clearly how very large a proportion the casualties due to stranding and collision bear to the grand total:—

Shipping Casualties to British Vessels: June, /07, to June, /08.

Nature of the Casualties.	Total Losses.		Serious Casualties.		Total Losses.		Serious Casualties.	
	No.	Tonnage.	No.	Tonnage.	No.	Tonnage.	No.	Tonnage.
	Sailing Vessels.				Steamships.			
Founderings	10	725	—	—	5	3,717	—	—
Strandings	63	15,274	73	23,084	42	61,705	316	513,704
Collisions.....	19	1,720	54	14,320	8	6,452	183	224,670
Other Causes	5	1,958	130	100,869	3	6,582	275	451,217
Missing Vessels ..	8	9,277	—	—	6	6,132	—	—
Total.....	105	28,954	257	138,273	64	84,588	774	1,189,591

Loss of Life at Sea.

The following return of lives lost on vessels of all kinds belonging to the U.K. during each of the 13 years ending the 30th June, 1908, shows that a very considerable proportion of the aggregate results from preventable causes:—

ars.	Founderings.				Strandings.				Collisions.				Missing Vessels.			
	No. of Cases.	Lives Lost.			No. of Cases.	Lives Lost.			No. of Cases.	Lives Lost.			No. of Cases.	Lives Lost.		
		Crew.	Passengers and others.	Total.		Crew.	Passengers and others.	Total.		Crew.	Passengers and others.	Total.		Crew.	Passengers and others.	Total.
5-96	37	86	10	96	29	261	172	433	33	135	256	391	46	682	17	699
6-97	19	57	1	58	30	252	29	281	16	42	7	49	33	501	8	509
7-98	9	64	—	64	21	84	4	88	23	52	37	89	23	261	2	263
8-99	24	153	1	154	19	185	140	325	23	78	2	80	35	616	3	619
900	20	141	5	146	33	154	16	170	26	71	3	74	50	536	1	537
0-01	20	103	12	115	28	185	20	205	29	127	16	143	25	414	—	414
1-2	19	54	10	64	34	185	1	186	15	63	—	63	33	504	661	1,165
2-03	25	152	17	169	26	97	2	99	15	49	1	50	18	226	4	230
3-04	18	69	3	72	24	122	2	124	21	60	6	66	16	208	1	209
4-05	14	51	5	56	22	165	—	165	12	66	3	69	29	357	6	363
5-06	16	79	—	79	31	211	105	316	25	55	5	60	19	217	1	218
6-07	22	148	7	155	22	164	83	247	30	66	1	67	16	182	1	183
7-08	16	37	3	40	23	69	4	73	21	41	—	41	16	274	3	277

*In this year the loss of life was swollen by the loss of 73 lascars and 655 native passengers in the s.s. *Camorta* of Glasgow, which was reported as missing while bound for Rangoon.

The following is a return of the lives lost in British registered merchant vessels by sea casualties during the year ending 30th June, 1908 :—

Sailing and Steam.

Nature of the Casualties.	Sailing Vessels.					Steam Vessels.					Total.				
	Vessels in which Lives were Lost.		Lives Lost.			Vessels in which Lives were Lost.		Lives Lost.			Vessels in which Lives were Lost.		Lives Lost.		
	No.	Tonnage	Crew	Pas-sen-gers	Total	No.	Tonnage	Crew	Pas-sen-gers	Total	No.	Tonnage	Crew	Pas-sen-gers	Total
Founderings	7	495	21	2	23	3	1,621	14	1	15	10	2,116	35	3	38
Strandings	18	7,377	59	1	60	10	14,617	24	47	71	28	21,994	83	48	131
Collisions	11	850	24	—	24	5	4,458	5	—	5	16	5,308	29	—	29
Other Causes	20	16,103	28	—	28	25	48,297	40	3	43	45	64,400	68	3	71
Missing Vessels ..	13	10,167	172	2	174	7	6,246	129	9	138	20	16,413	301	11	312
Total	69	34,992	304	5	309	50	75,239	212	60	272	119	110,231	516	65	581

The measure of safety enjoyed by passengers in ocean liners is astonishing. In 1903-4 only five passengers lost their lives by any sea casualty on British steamships, in 1904-5 eight, whilst 1907-8 established an absolute record seeing that four was the sum total ; in the same year however 219 members of the crews of steamships and 281 of the crews of sailing ships were lost by reason of sea casualty.

Dealing in the first place with the subject of—

Strandings,

we find the causes operating most frequently to be :—

(1.) Bad look-out.

Look-out. Not only from the bridge, but also from forward there is need of a never-ceasing vigilance—at once active and intelligent. Unless an officer is fully alive, both mentally and physically, and is capable of readily noting the existence of danger, whether it be by reason of shoaling water, the approach of another ship in a fog, the unexpected bearing of a fixed light, or the brewing of a storm it is but a question of time as to when and where trouble will come upon him.

The difficulties in the way of keeping an adequate look-out in thick or heavy weather are sometimes very great; yet the necessity for, and the obligation to keep, a good look-out must always increase with the risk involved in a lax and superficial performance of this duty. In fine weather a careless confidence not infrequently takes the place of seamanlike precaution, and to recall cases of collision, obviously and even admittedly caused by a gross neglect of this the most elementary of all conditions of safe navigation, presents no difficulty.

Illustrations.

(a) At about 3 a.m. on the 28th of March, whilst the s.s. *Yesso*, bound down the Bristol Channel in ballast, was steering a course W. by N., the look-out on the forecastle-head reported the green light of a sailing ship about three points on the port bow. No answer was returned from the bridge, and the look-out hailed again and yet again, but still no notice was taken. Ultimately the steamer, without having either altered her helm or checked her speed, struck the bows of the schooner *Lizzie R. Wilce*, with the result that the steamer sank, and three lives were lost. It appears that the master who was in charge had left the bridge after sighting the green light, and only returned just before the collision; the second officer meantime, though on the bridge, did not deem it any part of his duty to attend to the navigation of the ship. *The Yesso* (1891).

(b) Shortly before 11.45 p.m. on the 14th July, 1909, the s.s. *Eddystone* (2323 tons g.r.) was in the North Sea to the northward of Haisborough Light-ship bound from Marioupol to Hull. The *Eddystone* was on a course of N.W. ¾ N. Magnetic, and was making about 8 knots an hour. The chief officer in these circumstances sighted a number of white lights bearing from one to two points on the starboard bow at a distance of about 5 miles. The *Eddystone* was kept on her course so as to pass the white lights, which were taken to be on fishing vessels, on the starboard side. When the *Eddystone* had drawn up to within a few lengths of the lights, red lights were observed under the white lights. The engines of the *Eddystone* were put full speed astern and the helm put hard-a-port, but notwithstanding these steps the *Eddystone* struck Submarine C. 11 on the port quarter with the resultant loss of 14 lives. The white lights were in fact the lights of a fleet of submarines working to the southward and westward and the whole cause of the casualty was the failure of those on board the *Eddystone* to observe the red lights in sufficient time. The excuse made by those on board the *Eddystone* was that the haze on the water obscured the red lights, but even apart from the obscuration, the fact of the white lights not broadening on the starboard bow should have satisfied those on the *Eddystone* that the craft exhibiting the white lights were crossing the course of the *Eddystone* from starboard to port. *The Eddystone* (1909).

(c) On the 22nd July, 1909, the barque *Gladys* bound from Antwerp to Fredrikstad with a cargo of pig iron came into collision with and sank the steam trawler *Prome* with all hands. At 9 a.m. on the morning of the 22nd July the *Prome* was trawling with the Gamecock Trawling Fleet in the vicinity of the Dogger Bank. The wind was W.S.W., fresh and the weather was fine and clear. The trawler was stationary, heading N.W. or N.N.W. and was engaged in drawing up her trawl on her port side. She was carrying a basket ball on her forestay. The *Gladys* was under all plain sail and steering N.E. by E. magnetic and making about 8 knots an hour. It was not until the *Gladys* was *The Gladys* (1909).

within about 50 yards of the trawler that anyone on board of her became aware of the trawlers presence. The master of the *Gladys* then saw the masthead of the trawler just over his bow. He gave the order to hard-a-port, but the stem of the *Gladys* struck the port side of the trawler abaft the foremast and within three minutes the trawler sank. The explanation of the casualty appears to be that there was no one forward as lookout on the *Gladys* and by reason of the trim of the ship the captain from the poop could not see what was immediately ahead with the result that although the trawler could and ought to have been seen for nearly an hour the trawler was never in fact sighted until practically in collision. The *Gladys* was held alone to blame. £2,930 was paid in satisfaction of life claims and £2,850 for the loss of the trawler, &c.

Calling look-out man off duty.

A most reprehensible practice is that of calling the look-out man from forward for some purpose unconnected with his immediate duty. The danger of such a course is obviously increased when navigating at night or in crowded waters; and instances of collision from time to time recur in which the temporary absence of the look-out for one or other of the following purposes—

(1.) Shortening sail,

(2.) Clearing up, and getting the anchor inboard,

(3.) Taking a message to the engine-room,

(4.) Attending to the side lights,

has involved a ship in liability for a collision.

The disastrous collision between the s.s. *Crathie* and the s.s. *Elbe*, on the 30th January, 1895, resulting in the loss of about 340 lives, was mainly due to the want of a proper look-out on board the *Crathie*; but it was further alleged that both the chief officer and the look-out were in the galley for about ten minutes prior to the collision. The stranding of the P. & O. s.s. *China* on Perim Island on the 26th March, 1898, was undoubtedly the result of bad look-out and a disregard by the master of certain obvious warnings. The master's certificate was suspended for six months. In two or three cases of collision in the North Sea, caused by gross neglect in the matter of look-out, and resulting in loss of life, prosecutions have been instituted, and convictions obtained.

Illustrations.

(a) The steam trawler *Sapphire* of Hull, when about 120 miles E. by S. of the Spurn, shortly after midnight, and in fine clear weather, ran into and sank a Grimsby fishing boat, with loss of life. The boatswain and third hand were on watch from 12.30 a.m., but in the course of the watch the boatswain left the bridge for about twenty-five minutes, and the third hand, having lashed the wheel, went to sleep under the lee of the weather cloth. Both men were prosecuted, and on conviction were sentenced to six months imprisonment. *The Sapphire* (1895).

(b) The steam carrier, *Jubilee*, when steaming on a fine night over fishing ground in the North Sea, ran into and sank a Yarmouth fishing smack, only one out of six of her crew being saved. An A.B. was steering the *Jubilee* at the time, and though he knew that the mate had gone below to get coffee, he did not keep a look out ahead, and never saw the smack until just before the collision. The mate had seen the smack before he went below, but did not tell the A.B. at the helm. The A.B. was charged with manslaughter, was convicted and sentenced to six months imprisonment. *The Jubilee* (1895).

It may well be doubted whether anything short of three deck hands in every night watch on a sea-going steamer is sufficient.

In a case of collision at night, where it was admitted that there were only two seamen in the watch on deck, one at the wheel and the other on the look-out, Mr. Justice Butt said:—

"Under these circumstances, if anything happens out of the ordinary way, either the look-out man or the helmsman must be sent away from his post to do what is necessary. As a matter of fact, something did happen requiring a departure of one of these from his post, for it was discovered at a critical time when these two steamers were approaching one another, that the red light of the *Deeside* had gone out or was so dim as to be practically useless. What was to be done? The man had to leave the look-out to take that light out of its place and to carry it forward to the lamp-house in order to get it re-trimmed. The fact is that not only the lamp, but the look-out man both disappeared from their places some three or four minutes before the collision and just at the critical time." *The Deeside* (1890).

Unfitness for look-out or helm.

A master should endeavour, in the case of each member of his crew, to learn whether deafness, colour blindness, or physical disease in any shape or form, renders the man unfit for the ordinary duties of a look-out. That care in this direction is essential may be fairly judged from the fact that, in respect of colour blindness alone, no less than 61 out of a total of 5,200 men who went up for their examinations in a given period of time were rejected. A prudent master, too, will soon learn which of his crew are

most handy at the wheel. Not a few able seamen are entirely unfitted for the duty from habitual, though may be not deliberate inattention to the work of keeping the course given them to steer.

Where a crew is shipped at a port in the U.K. for foreign service it is highly advisable that the whole should be subjected to medical examination, and to this end the Shipping Federation have secured the services of qualified doctors at the larger U.K. ports to do the work at the fixed rate of one shilling per man. The saving to the shipowner in medical expenses at foreign ports and possible claims under the Workmen's Compensation Act, 1906, will far more than recoup the initial outlay.

(2.) Neglect to Use the Lead.

When the lead should be used.

It may probably be laid down as a binding rule of conduct that whenever a master is uncertain of his ship's position, but he has, or should have, reasonable grounds for supposing that he is in the neighbourhood of land, and there are no certain and readily available means of ascertaining his precise position, the lead should be used and used again until the position is fixed with as great a degree of accuracy as existing circumstances permit. The prevalence of thick weather makes the rule the more imperative.

"Old fashioned and troublesome it may be, but as affording an indisputable means of verifying the position of a vessel approaching the shore it stands unrivalled; and those shipmasters who wish to keep their certificates unblemished, and who desire to win a reputation as safe navigators, will do well to give the lead a prominent place in their repertory of practical aids to safe navigation."

Reasons for use of lead.

The number of suspensions due wholly or in part to neglect on the part of masters and officers to use the lead

is as surprising as it is significant. A bad helmsman, a slight but unnoted deviation of the compass, a stronger flow or ebb than usual, the action of the propeller or a beam wind, may at any time take a ship imperceptibly off her course; hence in the neighbourhood of land, and in the absence of any surer guide, *the frequent and careful use of the lead* cannot be too strongly urged.

It has been very truly said that masters do not so much come to grief through want of knowledge, as, in the vast majority of cases, by their failure to put into practice the elementary rules which should always govern a sailor's actions. In truth, it is a master's ability or inability to adopt "aids" to safe navigation that forms one of the best test of his efficiency. And amongst such "aids" the lead stands out in the foremost rank.

(3.) Excessive Speed in a Fog.

Speed in a fog.

The mistaken idea that the interest of his owners demands it, and the assumption that his own credit for making smart passages is at stake, alike prompt a master to keep going in foul weather and in fine at his best rate of speed. The loss of the s.s. *Stella* on the Casquets on the 30th March, 1899, will not soon be forgotten; the master with his almost unique experience of the cross-channel route, and his absolute self-confidence, cared little for the fog, dense though it was; he made his 18 knots an hour—and paid the price; but in justice to this master it may be added that with death, and worse than death—failure, blankly staring him in the face, he gave to the world another splendid instance of courage and resource whereby, after the vessel struck, the lives of many of the passengers and crew were saved.

Moderate speed.

That ships must go at a moderate speed in a fog, mist, or falling snow, is definitely laid down in Article 16 of the

Regulations for the Prevention of Collisions, and probably a rate of speed held to be immoderate by the Admiralty Court when determining the question of liability for a collision would be held an improper speed on a Board of Trade inquiry into the cause of a stranding—with the possible consequence in the latter case of suspension of the master's certificate.

What is a "moderate" speed must be determined by having regard to all the circumstances of each particular case.

Illustrations.

The Elba (1894).

(a) The *Elba*, a s.s. of 2,293 tons gross, whilst on a voyage from Bombay to Hull with wheat, encountered foggy weather in the North Sea, and when off the Outer Dowsing was making about 2½ or 3 knots an hour over the ground against a 1½ knot current. A disastrous collision occurred between the *Elba* and the s.s. *William Balls* to the westward of the Outer Dowsing, and on the trial it was held that the *Elba* was to blame on the ground that her speed was excessive.

The Arundo (1895).

(b) In May, 1895, the s.s. *Arundo* ran into and sank the s.s. *Monton*, about 15 miles to the south of St. Catherine's point, the weather being a dense fog. The *Monton* was proceeding at half speed (about 5 knots an hour) and the *Arundo* at slow (about 3½ or 4 knots), on practically opposite courses when the whistle of the one steamer was first heard by the other in the fog. *Held* that both steamers were proceeding at an immoderate rate of speed.

The Campania (1900).

(c) The *Embleton*, a barque of 1,196 tons register, whilst on a voyage from Liverpool to New Zealand, was proceeding down the St. George's Channel on the morning of the 21st July, 1900, the weather at the time being a dense fog. The barque was close hauled on the starboard tack, heading about S. ½ E. by the compass and was making about two knots an hour through the water. Under these circumstances the whistle of a steamer, which proved to be the *Campania*, was heard a long way off broad on the starboard bow. The *Embleton* was kept on her course and the fog horn was duly sounded. Ultimately the *Campania* loomed up right abeam and struck the barque at nearly right angles, sinking her immediately with a loss of 11 lives. The *Campania* shortly before the collision was proceeding on a course N. 35° E. true and was making between 9 and 10 knots an hour, with her engines working at slow. The fog horn of the barque was not heard either before or after the barque came into sight. On the trial of the action it was held that the *Campania* was to blame for proceeding at an excessive rate of speed in the circumstances.

(4.) Deficient Aids to Navigation and the misuse of existing Aids.

Whatever tends to a greater degree of safety and greater certainty in navigation deserves the most careful consideration of masters and officers. Three things of primary importance call for remark in this place, and it need

hardly be said that a ship is not proper found in the absence of—

(a) The latest and best Charts of the seas and other waters to be navigated.

Courts of inquiry still find it necessary on occasion to find fault with the quality of charts on board. **Charts.**

Illustrations.

(a) In the year 1891, the s.s. *Trent* was lost in consequence of stranding upon the Missipezza Rock in the Adriatic. At the Board of Trade inquiry subsequently held at Newcastle, it appeared that the master had been navigating with a chart for the Eastern part of the Mediterranean, on which chart the rock was *not* marked, and that his sailing directions were published in 1866. The Admiralty Charts and Sailing Directions correctly noted the existence and position of the Rock.

(b) In the course of a formal investigation as to the stranding of the ship *Riversdale*, it appeared that the master, on finding his ship chartered to load at Tchio in New Caledonia, obtained a General South Pacific Chart, and a small Coast Chart, both published by a private firm. On the former Tchio was not distinctly marked, and on the latter it was not marked at all. The insufficiency of the charts was held to have directly contributed to the stranding.

Yet it does not follow, because a master was using a chart at the material time which was not absolutely the best and latest, that he would be the subject of censure.

Illustration.

On the morning of November 14, 1894, the s.s. *Caloric* bound for Bilbao in ballast brought up in Bilbao Bay to her port anchor, the wind being in the S.W., blowing a gale. A pilot came on board shortly after anchoring, and when the gale increased he advised that the *Caloric* should be taken under the land. In getting under way it was found that one of the anchors was foul of two telegraph cables, both of which ultimately parted, one by chafe, and the other by cutting. The track of the cables was clearly shown on the Admiralty Charts, but *not* on the "blue" chart in use on board the *Caloric*, nor in the book of directions accompanying the chart. *Held* that no blame attached to the master in anchoring where he did. *The Caloric* (1895).

(b.) Compasses of the best make and accurately adjusted; also Deviation Cards carefully worked out and frequently verified or corrected.

Failure to ascertain the deviation from time to time by proper observations constitutes the efficient cause of more strandings than is generally supposed. The more frequently compass errors are determined the less the chance of coming to grief. "Trust in deviation cards is a snare," says an old navigator, and with truth if he means trust in cards not worked out and verified with care and precision. **Compasses.**

Fixing position.

"When coasting, a vessel's position cannot be too often or too accurately fixed, since, as everybody knows, currents are uncertain, and fogs in some parts of the world shut down very rapidly. Moreover, close attention paid to fixing position affords a means of detecting bad steerage or unknown errors in the compass." (Lecky's *Wrinkles of Navigation*.) Masters should impress upon their officers the necessity for taking a four-point bearing on every practicable occasion.

It has been urged that every officer on board should keep the reckoning independently, comparisons being subsequently made. Such a course might reasonably be expected to result in greater efficiency on the part of officers, greater certainty in the reckoning, and the development of more interest in the navigation of the ship.

The following extract from the report of a Marine Court of Inquiry into the cause of the stranding of the s.s. *King Arthur* is pertinent to the subject under discussion :—

> "It appears that for some months the standard compass and the port-bridge compass were out of order, and had not been used ; and that the starboard-bridge compass was the only compass on board used for all purposes. Without doubt it was the duty of the master, on taking over the charge of the ship, to have personally inspected the compass and seen for himself that they were in a satisfactory condition. The chief officer appears to have known for some months the state of the compasses, and to have intentionally misled the government surveyor as to their state. He also appears not to have informed the owners or their superintendent as to their condition, and the Court are of opinion that he was in this respect guilty of gross misconduct." In the result, the Captain's certificate was suspended for four months.

(c.) The latest Admiralty Sailing Directions.

Sailing Directions.

Those published by private firms are not always up to date, and are sometimes misleading.

Where a master fails to provide himself with proper charts and sailing directions before starting on a voyage such neglect has often received the severe censure of Courts of Inquiry. Of course, the mere fact that a master was navigating with the aid of charts and books of directions issued by a private firm, ultimately proved to have

been defective, is not necessarily a breach of duty; yet the danger of using any other than the latest and the best Admiralty Sailing Directions is demonstrated by experience.

Insufficient allowance for tides and currents.

That the warnings given on the face of charts and in books of directions are not always considered from time to time clearly demonstrated. Officers have been frequently blamed for not *making any, or any sufficient allowance for the force of tides, currents, beam winds, &c., when fixing the course.* As a matter of fact, out of fifty-nine inquiries into the causes of strandings taken at hap-hazard, in no less than fifteen it was distinctly found that either no allowance, or no sufficient allowance, had been made for tides or currents, and in nearly every case the master's certificate was adversely dealt with.

Illustrations.

(a) Whilst on a voyage from New Orleans to Newport News, the s.s. *Kimberley* was being navigated with a chart by a private firm, and sailing directions accompanying the chart. The sailing directions distinctly pointed out the existence under certain circumstances of strong currents setting to the S.W., whereas the chart contained no warning thereof. Approaching Cape Henry, the master set his course without consulting the directions, and made no allowance for current, in consequence of which the steamer stranded on the beach to the southward of Cape Henry. The total damage to the ship and cargo amounted to more than 30,000*l.* *The Kimberley* (1889).

(b) The s.s. *Rothesay* stranded whilst attempting to enter the harbour of Galle without the service of a a pilot. On the Inquiry which followed, the master himself produced an Indian Ocean and Bay of Bengal Directory, which says, "it is essentially necessary that vessels should obtain the services of a pilot on account of sunken dangers." His certificate was suspended for twelve months. *The Rothesay* (1891).

"Overloading."

Two possible causes of casualties, of which much has been said in the past, viz., "overloading" and "undermanning," may in these days be treated as negligible quantities. Thirty years ago it was seriously urged that overloading and undermanning were two of the most prominent causes of loss of life at sea. The agitation raised by Mr. Plimsoll was not, however, wholly mischievous or misplaced, and few people would now advocate the abolition of the familiar disc and maximum load line. The Board of Trade returns for the year ending

"Undermanning."

30th June, 1908, only record two losses as having resulted from overloading and no casualty is specifically assigned to undermanning. These very satisfactory figures are due not so much to the vigilance of officials or the severity of the penalty inflicted in the case of a wilful breach of the Act as to the thorough unanimity which exists amongst British shipowners in and about the avoidance of even the suggestion of unseaworthiness.

The last considerable group of casualties to be dealt with come under the head of

Collisions.

Not one in fifty of the cases of collision tried in the Admiralty Court is dismissed on the ground that the collision was, in the circumstances of the case, inevitable; as a matter of fact, the defence of act of God or *force majeure* is very seldom raised and hardly ever sustained.

The Rules for the Prevention of Collisions at Sea are dealt with at such length elsewhere, that a bare reference to some of the chief causes of collisions will at present suffice :—

(1.) Neglect of Article 23.

Failure to slacken speed.

This Article read thus :—"*Every steam vessel which is directed by these Rules to keep out of the way of another vessel shall on approaching her, if necessary, slacken her speed or stop or reverse.*

Article 18 of the old Rules ran thus :—"*Every steamship when approaching another ship so as to involve risk of collision shall slacken her speed, or stop and reverse if necessary.*"

In collision cases tried in the Admiralty Court, one or more steamers being involved, the following plea, or a substantially similar one, is almost always raised :—"*Those*

on board the ——— improperly neglected to slacken her speed, or to stop and reverse her engines, or to do so in due time." In the great majority of such cases cross-examination is addressed in support of this charge, and the determination of liability generally hinges upon the decision of the Court on this specific point.

The late Mr. Justice Butt, in a case of collision between a steamer and a sailing ship, falling for decision under the rules in force up to 1897, gave expression to his views on this subject as follows:—" In my judgment Article 18, if not the most important, is one of the most important of the whole of the regulations; and in my experience *more life has been lost and more property sacrificed at sea from the constant neglect of those in charge of steamers to comply with the injunctions of that Regulation than is the case with any other.*"

(2.) No Lights: or Defective Lights.

Under this head sailing ships are distinctly the greater culprits. No sane master of a steamer would dream of navigating at night without his regulation lights; but the sanity of the thing is not universally recognised amongst some masters of the smaller types of craft. Even with ships of considerable size laxity is occasionally found, *e.g.*, in a disastrous collision which took place about midnight of the 6th of January, 1886, the emigrant ship *Kapunda* was run into and sank by a barque, whose side-lights were lighted and put in their screens after the *Kapunda* was sighted, with the result that 289 lives were lost, together with two valuable ships and their cargoes. **Defective lights.**

There is good ground for believing that skippers of fishing vessels and other small craft navigating round and about our coasts habitually disregard the regulations as to lights. The condition of affairs is improving; yet in a **Disregard of lights' regulations.**

recent case of collision between two trawlers off the Eddystone at night, it was proved that one of the two had no light exhibited or even ready, whilst the other had her side-lights ready, but they were not in fact exhibited.

The Nimble.

Again, in a case of collision between a steamer and a Brixham trawler off the Start at night, the trawler, though making about seven knots an hour, with her trawl up, showed a white light only at the masthead, thereby misleading a steamer proceeding up channel, with the result that the trawler was sunk with the loss of four hands. The fishermen off the N.E. coast of Scotland would appear to be especially lax in their attendance to the rules determining the special lights to be carried by small fishing craft.

Obscuration of lights.

It is greatly to be desired that masters and owners of sailing ships should pay more attention to the position in which side-lights are placed, and avoid the possibility of obscuration by sails, rigging, &c. The ultimate decision in the great collision case in which the ship *Vandalia* and the s.s. *Duke of Buccleuch* were involved (resulting in the loss of the latter, with all hands), turned upon the question whether a certain degree of obscuration of one of the ship's side-lights—such obscuration being brought about by the bellying of the foresail—could by any possibility have contributed to the collision which took place.

(3.) Bad look-out (*a*).

(4.) Excessive Speed in Foggy Weather (*a*).

(5.) Close Shaving (*a*).

Assuming that a master is in command of a good steamer, well manned and properly stowed, and that he is anxious to avoid such casualties as are in their nature

(*a*) These matters are all dealt with in the chapter on Collisions.

preventable, the observance of the following short code of rules would go far to secure for him that immunity from disaster which so well tallies with his own and his owner's interests :—

A short code of Rules.

I.—Never fail both by day and night to **keep a good look-out.**

II.—Get the best charts; carefully watch your compasses and determine errors; make diligent use of your sailing directions.

III.—**Whenever there is any risk involved** in keeping on, and there is the obligation on you relatively to another vessel or vessels to keep out of the way, **slacken your speed: stop if necessary.**

IV.—**When in serious doubt** of any kind as to the safety of your ship, and the doubt, if well founded, would be adversely determined the sooner by a high rate of speed, **stop or reverse your engines,** according to the apparent urgency of the case.

V.—See that your **lights** are **properly fixed and brightly burning** from sunset to sunrise.

VI.—**In a fog put your engines at dead slow,** and keep them working as slowly as they can work consistently with steerage way, if, and so long as there is any reasonable probability of meeting, or crossing the course of, other vessels. **Stop** your engines on hearing another ship's whistle forward of your beam.

VII.—**In a thick fog take all headway off your ship** (1) on hearing another ship's whistle or fog horn ahead or narrow on either bow; (2) if uncertain of your position, but in all probability you are getting near the land; and (3) if in narrow and much

frequented waters, whether other vessels are or are not known to be in the immediate neighbourhood.

VIII.—When in any uncertainty as to the position of your ship, and there is any probability of your being in the neighbourhood of land or shoal water, **keep the lead going** at short intervals until satisfied of your safety.

Total of Sailing and Steam Vessels belonging to the U.K. totally lost, 1883-1908.

Years.	Foundcrings.		Strandings.		Collisions.		Other Causes.		Missing Vessels.		Totals.	
	Vessels.	Tons.	Vessels.	Tons.	Vessels.	Tons.	Vessels.	Tons.	Vessels.	Tons.	Vessels.	Tons.
1883-84	113	27,690	351	125,616	89	29,373	43	21,299	121	41,523	717	245,501
1884-85	89	23,738	299	123,792	90	26,563	23	11,688	59	25,903	560	211,684
1885-86	74	16,189	307	132,354	88	21,466	40	19,613	44	22,693	553	212,315
1886-87	92	25,946	302	110,561	96	21,222	46	21,457	66	34,591	602	213,777
1887-88	102	24,773	269	101,592	93	18,255	59	26,069	49	30,160	572	200,849
1888-89	81	20,994	249	91,496	89	37,814	35	14,310	53	19,350	507	183,964
1889-90	77	19,733	258	110,190	88	24,878	34	15,190	37	21,895	494	191,886
1890-91	88	20,494	264	114,989	97	28,555	25	12,684	69	30,088	543	206,810
1891-92	107	32,030	263	109,921	84	18,020	34	13,533	59	23,499	547	197,003
1892-93	64	16,478	163	77,840	65	17,479	29	17,455	32	25,528	353	154,780
1893-94	86	23,888	304	103,686	88	23,365	30	14,550	76	35,133	584	200,622
1894-95	83	15,526	245	89,484	88	19,190	30	8,796	83	20,644	529	153,640
1895-96	86	16,926	197	111,298	89	28,448	29	19,190	46	36,366	447	212,228
1896-97	84	11,415	293	109,715	72	15,755	26	15,732	33	24,952	508	177,569
1897-98	67	18,815	230	88,721	76	16,577	23	5,904	23	12,082	419	142,099
1898-99	80	26,543	201	82,890	61	19,385	23	12,850	35	34,013	400	175,681
'99-1900	61	16,244	215	109,021	75	23,947	19	10,609	50	19,855	420	179,676
1900-01	59	14,238	180	82,687	58	17,664	19	13,547	25	24,860	341	152,996
1901-02	55	8,149	190	69,282	54	15,311	16	9,791	33	18,098	348	120,631
1902-03	70	8,974	188	66,804	56	15,999	18	8,988	18	8,503	350	109,268
1903-04	79	15,348	214	84,291	73	19,925	19	6,578	16	9,838	401	135,980
1904-05	57	11,608	172	95,692	56	14,783	25	20,404	29	15,600	339	158,087
1905-06	61	18,526	171	78,346	61	15,788	19	8,616	19	9,181	331	130,457
1906-07	70	14,160	179	73,602	63	23,603	21	27,808	16	8,481	349	147,654
1907-08	50	5,087	170	78,998	56	9,505	14	8,720	16	15,522	306	117,832
Total	1,935	453,512	5,874	2,422,868	1,905	522,870	699	365,381	1,107	568,358	11,520	4,332,989

The foregoing Table shows that, excluding His Majesty's ships, 11,520 vessels of all descriptions (tonnage 4,332,989) belonging to the United Kingdom were totally lost in the 25 years ended June, 1908. The losses of sailing vessels fell from an average of 342 vessels (tonnage 79,621) for the previous 24 years to an actual loss of 198 vessels (tonnage 30,994) in 1907-8, the figures for sailing vessels both as regards number and tonnage being lower than in any of the previous 24 years. The losses of steam vessels were 108 (tonnage 86,838), while the average of losses in the previous 24 years was 125 vessels (tonnage 96,011).

Chapter V.

MARINE INSURANCE: Terms Used and Definitions.

Average.—Partial, as distinguished from total loss. "Warranted free from average" means that an underwriter insuring on such terms is not liable for anything other than a total loss of the subject matter insured. To come "under average" involves the idea of a partial loss from a peril insured against.

Average Bond.—A formal acknowledgment of liability to pay the proportion of general average losses or expenses due from any particular interest—generally cargo—when such proportion has been properly determined by adjustment.

Average Adjuster.—An expert in the law and practice essential to the determination of the precise amount or percentage due from any underwriter or insurer under a policy of marine insurance. Adjusters of the U.K. are for the most part members of the "Association of Average Adjusters," and their adjustments are controlled by certain Rules of Practice. The following is a list of average adjusters for the different ports, but it may not be a complete one:—

Belfast ..	Wm. Richards & Son
Cardiff ..	Francis & Arnold Lindley, R., Sons & Davison Manley Hopkins, Son & Cookes
Dundee ..	Gibson, Farquharson & Co.
Glasgow ..	Clancey, Son & Scott Hogg & Heath May & Richards Withers, W. E. & Son
Hull ..	Brown, G. W. Manley, Hopkins Son & Cookes
Liverpool ..	Barker, J. D. Clancey, Son & Tardrew Dale & Rundell Danson, F. C. & Co. Finlason, A. M. Loftus, H. & Partners Loftus, F. T. Lowndes & Wallace Manley, Hopkins, Son & Cookes McArthur, C., Clover & Stone Coxford & Reid Macgrath & Sons Withers, W. E. & Son

London ..	Brewer, A. & Co.	Newcastle..	Carmon & Peacock
	Clancey, Son & Bowman		Gifford, A. W.
	Cooper, C. & Son		Mayo, W. S. & Co.
	Dale & Rundell		Peacock, Wm.
	Danson, F. C. & Co.		Towers, W. E. & M. G.
	Elmslie, W. & Son		Richards, Wm. & Son
	Hogg & Heath		
	Lindley, Sons & Davison	Sunderland	Carmon & Peacock
	Manley Hopkins, Son & Cookes		Gifford, A. W.
			Jepps, C. V. & Son
	McArthur, C., Clover & Stone	West Hartlepool	Cookes & Partners
	Powell & Chany		Cooper, C. & Son
	Richards, W. & Son		Lindley, Sons & Davison
	Towers. W. E. & M. G.		

Abandonment.—A cession of all the rights of an assured in the subject matter of insurance to the underwriter. The cession is made by means of a notice in writing or word of month, and such notice must be given within a reasonable time after the assured receives news of the casualty or event on which the notice is founded. Where notice of abandonment is accepted it is irrevocable.

Absolute Total Loss.—A total destruction or annihilation of the thing insured, or a complete and permanent removal of the thing out of the power of the assured and the underwriter through the operation of some peril insured against.

Adjustment.—A process whereby the assured determines—with the assistance of an average adjuster in any cases presenting any complexity of facts or calculations—the measure of his claim upon his underwriters; and in cases of general average, the measure of proportionate liability between the several interests.

Broker.—The middleman between insurer and assured. With rare exceptions all marine risks are placed at Lloyds and/or the companies by insurance brokers who are agents of the assured to pay the premium, get the policy signed and collect losses thereunder. The broker is the debtor of the insurer, but in case of a claim under a policy the insurer is directly responsible to the assured.

Cancellation.—Where there is a transfer of ownership during the currency of a policy the assured apart from special agreement cannot claim back any part of the premium. The Institute Time Clauses, however, which are attached to the ordinary form of Lloyd's policy provide that should the insured vessel be sold or transferred to new management, then failing agreement to such sale, &c., the cancellment shall date from the sale or transfer unless the vessel has cargo on board and has already sailed or is at sea in ballast, in either of which cases the cancellation is suspended until arrival. A pro rata daily return of premium is made.

Constructive Total Loss.—The Marine Insurance Act, 1906 (Sec. 60), enacts that there is a C.T.L. where the subject matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure has been incurred. In particular there is a C.T.L. (1) where the assured is deprived of possession of his ship or goods by a peril insured against without the likelihood of recovery; or (2) in the case of damage to a ship where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired; or (3) in the case of damage to goods where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

Continuation Clause.—A clause in practically all time policies providing that if at the end of the period of the insurance the ship is at sea the insurance may be extended until her arrival at some port, subject to previous notice to the underwriters. The Finance Act, 1901, provides that a policy shall not be invalid on the ground

that by reason of a continuation clause the risk covers a period in excess of twelve months.

Covering Note.—A memorandum setting out concisely the material terms of an insurance, and initialled by the insurer, as a preliminary to the issue of a policy.

F.C. and S. Clause.—The ordinary form of Lloyd's policy provides as follows:—"Warranted free of capture, seizure, and detention and the consequences thereof, or of any attempt thereat, piracy excepted, and also from all consequences of hostilities or warlike operations, whether before or after declaration of war." "Capture" appears to include every act of seizing or taking by a belligerent or enemy; whilst "seizure" appears to cover acts of forcible possession by any lawful authority or overpowering force.

F.P.A.—Free of particular average. Insurances are often effected on the basis of underwriters being "Warranted free from particular average unless the vessel be stranded, sunk, burnt or in collision." Under an F.P.A. policy the assured can only recover a partial loss when it arises out of a G.A. sacrifice, unless the contract contained in the policy be apportionable. The insurer, however, is liable for his proportion of salvage charges and for charges and expenses incurred under the sue and labour clause.

Floating Policy is a policy which describes the insurance in general terms, and leaves the name of the ship or goods and other particulars to be defined by subsequent declaration. A declaration must in the case of goods comprise all consignments within the terms of the policy, and the value must be honestly stated.

General Average.—A term denoting expenditure or partial loss the result of voluntary sacrifice, and involving a right on the part of the owner of the property sacrificed to receive contribution from other interests directly benefited.

General Average Loss "is a loss caused by or directly consequential on a G/A act. It includes a G/A expenditure as well as a G/A sacrifice." A G/A expenditure may be incurred after the peril has been avoided, but there can be no "sacrifice" except to secure safety.

General Average Act occurs "where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure."

Illustrations.

G/A Act.	G/A Sacrifice.	G/A Expenditure.
Putting into a port of refuge.	Jettison of cargo.	Discharge of cargo in port of refuge to enable repairs.
Voluntary stranding to prevent sinking.	Slipping of anchor and chain.	Wages and provisions in port of refuge if Y/A Rules apply.
Working of engines when s.s. ashore in position of peril.	Cutting away mast to right a ship.	

Honour Policy (otherwise a P.P.I. or wager policy).—A policy which may or may not in fact cover an actual interest of the assured in the subject matter insured, but in relation to that subject matter the underwriter agrees that the insurance shall stand "interest or no interest," or the policy itself shall be "deemed sufficient proof of interest," or "without benefit of salvage." Sec. 92 of the M.I. Act provides that every contract of marine insurance by way of gaming or wagering is void.

Institute Time Clauses.—These clauses represent an aggregate of amendments to and graftings upon the original form of Lloyd's policy. From time to time these clauses are varied or added to by the Institute of Underwriters. The clauses for 1910 are set out on page 59.

Insurable Interest.—A person has an "insurable interest" in a marine adventure when he may benefit by the safety or due arrival of the property concerned, or may

be prejudiced by its loss or by damage thereto. Ownership is not necessary; any right in relation to property in transit by sea, or even a liability arising out of a contract concerning such property, may properly call for an insurance.

JANSON CLAUSE.—A clause intended to relieve an underwriter for the first 3 per cent. of any claim in the case of a P/A. on ships, although stranded, sunk or burnt, owners agreeing to remain uninsured for this 3 per cent.

LLOYD'S was originally a coffee house off Lombard Street, where seafaring men and men engaged in maritime business met. About 1770 an association was formed, of which underwriters and brokers were members, and a world-wide system of agencies in relation to marine insurance was inaugurated. The first Lloyd's Register of Shipping was issued about 1766. Lloyd's underwriters carry on business in premises over the Royal Exchange; their business is individual to themselves, but they have a corporate existence, the business of which is carried on by a committee elected by and from members of Lloyd's.

LLOYD'S AGENTS are appointed by the Committee of Lloyd's, and their principal duties are to report (1) all losses and casualties to Lloyd's; and (2) arrivals and departures of ships; (3) to assist the masters and owners of ships on the Register in case of casualty, &c.; and (4) to collect and pass on to Lloyd's any special imformation likely to be of interest to members.

LLOYD'S POLICY is the ancient form of policy almost universally employed in relation to insurances effected with Lloyd's underwriters and available only for use by such. A policy issued by underwriting members of Lloyd's has guarantees attached, seeing that each member on election has to deposit securities to the amount of

£5,000 to answer claims under policies underwritten. The standard form of the policy will be found on page 61.

Notice of Abandonment.—A notice given by the assured to his underwriters when the assured has good reason to suppose that the subject matter insured is a constructive total loss. The notice is an election on the part of the assured to abandon; but underwriters do not accept the abandonment until the loss is clearly demonstrated. Where notice of abandonment is accepted it is irrevocable; silence on the part of the insurer after notice is not an acceptance. If abandonment is not accepted, salvage and/or general average charges will probably be incurred, the assured must in his own interests issue writs forthwith against underwriters, unless, indeed, as is usually the case, underwriters agree to place the assured in the same position thereafter as if writs had been issued.

Open Policy.—A policy in which the value of the subject matter of insurance is not agreed. In case of a loss under such a policy the assured has to prove the measure of his loss.

P.P.I. Policy is a policy proof of interest.—The intention of such a policy is that the assured shall be under no obligation to prove an insurable interest in the case of a loss of the subject matter covered by the policy. This form of policy is also known as an "honour" policy, because the insurer is not legally bound to pay a loss under the policy. An immense amount of quite legitimate business is done through the medium of this form of policy, and insurers very rarely avail themselves of the plea that the policy is void in law.

Particular Average Loss is a partial loss of the subject matter insured caused by a peril insured against. Where there is a partial loss by reason of a general

average act, there is a primary liability on the part of insurers to pay in P/A subject to their right to be re-imbursed after the G/A has been adjusted.

Particular Charges.—Expenses incurred by or on behalf of the assured for the safety or preservation of the subject matter insured other than general average and salvage charges. Particular charges are recoverable from insurers under the sue and labour clause. Under an F.P.A. policy insurers are still liable for particular charges and other expenses properly incurred under the suing and labouring clause in order to avert a loss insured against.

Premium.—The sum of money paid the insurer by way of consideration to the insurer for his acceptance of a risk. In the case of Mutual Clubs and Protection Associations members' contributions are collected in the shape of calls after claims have been passed by the directors.

Protection Association.—A mutual association for the protection and/or indemnification of its members against losses and claims for which the member may become liable (without his actual fault or privity) to third parties. The scope of the cover is indefinite, inasmuch as in maritime business wholly unforeseen contingencies frequently arise, and the intention is to cover members against not only definite risks, such as loss of life, damage to cargo, &c., but also liabilities of a novel and extraordinary kind, so long as these arise in the course of the shipowners' business.

Practically the whole of the steam tonnage of the Western World is covered in eleven associations, the

contributing tonnages being in round figures as follows:—

Britannia Steamship Insurance Association, Ltd.	687,000	Neptune Steamship Protection & Indemnity Association ..	325,000
Hull Mutual Steamship Protecting Society, Ltd. ..	215,000	North of England Protection & Indemnity Association ..	2,350,000
Liverpool & London Steamship Protection Association, Ltd.	4,117,000	Schutzverein Deutscher Rheder	482,210
London Steamship Owners Mutual Insurance Association, Ltd.	1,451,000	Assurance foreningen Skuld..	800,000
Newcastle Protection & Indemnity Association ..	557,000	United Kingdom Mutual Steamship Assurance Association, Ltd.	1,956,000
		West of England Steamship Owners Protection & Indemnity Association, Ltd...	3,540,000

Return of Premium.—The premium is returnable to the assured where the consideration for the payment of the premium wholly fails and there has been no fraud or illegality on the part of the assured. Where the subject matter insured or part thereof has never been imperilled the premium or a proportionate part is returnable; so also where the assured has no insurable interest throughout the currency of the risk, provided the policy was not of the gaming or wagering kind.

R.D.C.—Running Down Clause providing for payment in case of a collision for which the assured's ship is liable of such proportion of three-fourths of any sum—not exceeding in respect of any one collision the value of the ship insured—as the assured's subscription bears to the value of the ship insured. The current form of R.D.C. will be found in the print of the Institute Time Clauses, 1910.

Salvage. Without benefit of.—An indorsement to this effect on the face of a policy indicates that the policy is a wager policy and void in law. In ordinary course the insurer is by reason of payment of a loss under the policy subrogated to the rights of the assured relative to third parties, but this is not the case where the policy is an "honour" or "wagering" policy.

Settlement of a claim is effected through the insurance

broker, who subsequently to the determination of the insurer's proportionate liability takes the adjustment and the policy to the various underwriters ; the initialling of a special endorsement on the back of the policy and the entering of the proper amount in the underwriter's books to the broker's credit constitutes a "settlement."

Slip is a memorandum prepared by a broker giving rough, but so far as they go precise, details of an intended insurance. The slip is shown by the brokers to underwriters or companies likely to write the risk. If the risk is accepted the slip is initialled by the prospective insurer for such amount as may be agreed. The slip is not a contract of insurance, no stamp being attached, but the policy is forthwith made out by the broker on the lines of the slip and handed the insurers for their signatures.

Small Damage Club is a mutual association of shipowners for the purpose of indemnifying members against claims or losses excluded by franchise in the ship's policies, *e.g.*, P/A losses under 3 per cent. occasioned by heavy weather.

Subrogation.—Where the insurer pays for a total loss of the subject matter insured he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject matter of insurance, and he is thereby "subrogated" to all the rights and remedies of the assured in respect of that subject matter. It is a general rule of law that where one person has agreed to indemnify another he will, on making good the indemnity, be entitled to succeed to all the rights and means by which the person indemnified might have secured reimbursement of his loss.

Sue and Labour Clause in the ordinary form of Lloyd's policy runs as follows:—"And in case of any

loss or misfortune it shall be lawful to the assured, their factors, servants or assigns to sue, labour and travel for, in and about the defence, safeguard and recovery of the said ship without prejudice to this insurance." The object of the clause is to encourage exertion on the part of the assured and induce him to take every step practicable for the protection or recovery of the thing insured without waiving any notice of abandonment, and also to put upon insurers a liability to pay their due proportion of any expenses properly incurred.

T.L.O. (total loss only).—A policy covering this risk pays in case of a constructive total loss, but the latter may be excluded by using the phrase, "Against absolute total loss only."

Time Policy.—Practically the whole of the mercantile steam tonnage is covered by policies insuring for a definite period of time—hence known as "time" policies. Sailing ships are still commonly covered by voyage policies. A policy for time has no implied warranty of seaworthiness, express or implied, grafted upon it, therein differing materially from the voyage policy. No policy for time may exceed twelve months' duration, but the Institute Time Clauses provide for continuation of the risk—subject to notice—up to arrival at a port of destination at a *pro rata* monthly premium.

Underwriter.—Any person capable of entering into an agreement can "underwrite" a marine risk, *i.e.*, sign his name at the foot of the policy as an insurer of a specific amount set against his name. The signature constitutes a separate agreement on the part of each of the underwriters. Every Lloyd's underwriter is called upon by the Committee of Lloyd's to deposit securities to the value of at least £5,000 in the hands of trustees approved by the Committee.

Valued Policy is a policy in which the value of the subject matter insured is for all purposes under the policy specifically agreed. The fact of a policy being valued dispenses with the necessity for proof by the assured as to the measure or extent of his loss if the subject matter be loss by a peril insured against. A valued policy may therefore, and often does, secure more than an indemnity to the assured.

Voyage Policy.—Where the contract is to insure the subject matter "at and from" or from one place to another or others the policy is called a voyage policy. The objection to this form of insurance is that in case of an unauthorised deviation from the voyage, or if the implied warranty of seaworthiness at the outset of the voyage is not complied with, the policy is thereby rendered void.

Wager Policy (or Honour policy) is one under which the assured may recover quite irrespective of any insurable interest. There is no intention on the part of either assured or insurer that the insurance shall be one of indemnity, and therefore on the face of the policy are found the words, "Interest or no interest," or "This policy to be deemed sufficient proof of interest."

Warranties are in effect undertakings on the part of the assured that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or denies the existence of a particular state of facts. A warranty must be exactly complied with, whether it be material to the risk or not. "A warranty in a contract of insurance is a condition or a contingency and unless that be performed there is no contract."

1910. INSTITUTE TIME CLAUSES. 1910.

HULLS.

And it is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel, and the assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the ship hereby insured, this Company will pay the assured such proportion of three-fourths of such sum or sums so paid as its subscription hereto bears to the value of the ship hereby insured, and in cases in which the liability of the ship has been contested, or proceedings have been taken to limit liability, with the consent in writing of this Company, the Company will also pay a like proportion of three-fourths of the costs which the assured shall thereby incur, or be compelled to pay; but when both vessels are to blame, then unless the liability of the owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the owners of each vessel had been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the assured in consequence of such collision.

Provided always that this clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbour, wharves, piers, stages and similar structures, consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.

Should the vessel hereby insured come into collision with or receive salvage services from another vessel belonging wholly or in part to the same owners, or under the same management, the assured shall have the same rights under this policy as they would have were the other vessel entirely the property of owners not interested in the vessel hereby insured; but in such cases the liability for the collision, or the amount payable for the services rendered, shall be referred to a sole arbitrator to be agreed upon between the underwriters and the assured.

In port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades whatsoever and wheresoever, under steam or sail, with leave to sail with or without pilots, to tow and assist vessels or craft in all situations, and to be towed and to go on trial trips.

Should the vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the underwriters, be held covered at a *pro rata* monthly premium, to her port of destination.

Held covered in case of any breach of warranty as to cargo, trade, locality or date of sailing, provided notice be given, and any additional premium required to agree immediately after receipt of advices.

Should the vessel be sold or transferred to new management, then, unless the underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the vessel has cargo on board and has already sailed from her loading port or is at sea in ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A *pro rata* daily return of premium shall be made.

This insurance also specially to cover (subject to the free of average warranty) loss of, or damage to hull or machinery through the negligence of master, mariners, engineers, or pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the owners of the ship, or any of them, or by the manager. Masters, mates, engineers, pilots, or crew not to be considered as part owners within the meaning of this clause should they hold shares in the steamer.

General average and salvage to be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; or if the contract of affreightment so provides, according to York-Antwerp Rules, or, in the case of Wood cargoes, York-Antwerp Rules omitting the first word of Rule I ("No"), but, in all matters not specifically referred to in York-Antwerp Rules I. to XVII. inclusive, the adjustment shall be in accordance with the law and practice obtaining at the place where the adventure ends and as if the contract of affreightment contained no special terms upon the subject.

Average payable on each valuation separately or on the whole, without deduction of thirds, new for old whether the average be particular or general.

Donkey boilers, winches, cranes, windlasses, steering gear, and electric light apparatus shall be deemed to be part of the hull and not part of the machinery. Refrigerating machinery and insulation not covered unless expressly included in this policy.

Warranted free from particular average under 3 per cent., but nevertheless when the vessel shall have been stranded, sunk, on fire, or in collision with any other ship or vessel, underwriters shall pay the damage occasioned thereby, and the expense of sighting the bottom after stranding shall be paid if reasonably incurred, even if no damage be found.

No claim shall in any case be allowed in respect of scraping or painting the vessel's bottom.

Grounding in the Suez Canal or in the Manchester Ship Canal or its connections, or in the River Mersey above Rock Ferry Slip, or in the River Plate (above Buenos Ayres) or its tributaries, or in the Danube, Demerara, or Bilbao River, or on the Yenikale or Bilbao Bar shall not be deemed to be a stranding.

The warranty and conditions as to average under 3 per. cent. to be applicable to each voyage as if separately insured, and a voyage shall be deemed to commence at one of the following periods to be selected by the Assured when making up the claim, viz. : at any time at which the vessel (1) begins to load cargo or (2) sails in ballast to a loading port. Such voyage shall be deemed to continue during the ensuing period until either she has made one outward and one homeward passage (including an intermediate ballast passage, if made) or has carried and discharged two cargoes, whichever may first happen, and further, in either case, until she begins to load a subsequent cargo or sails in ballast for a loading port. When the vessel sails in ballast to effect damage repair such sailing shall not be deemed to be a sailing for a loading port although she loads at the repairing port. In calculating the 3 per cent. above referred to, particular average occurring outside the period covered by this Policy may be added to particular average occurring within such period provided it occur upon the same voyage (as above defined), but only that portion of the claim arising within such period shall be recoverable hereon. The commencement of a voyage shall not be so fixed as to overlap another voyage on which a claim is made on this or the preceding policy.

In no case shall underwriters be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this policy.

In ascertaining whether the vessel is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

In the event of total or constructive total loss, no claim to be made by the underwriters for freight, whether notice of abandonment has been given or not.

In the event of accident whereby loss or damage may result in a claim under this policy, notice shall be given in writing to the underwriters, where practicable, and, if abroad, to the nearest Lloyd's agent also, prior to survey, so that they may appoint their own surveyor if they so desire; and whenever the extent of the damage is ascertainable, the underwriters may take or may require the assured to take tenders for the repair of such damage. In cases where a tender is accepted by or with the approval of underwriters, the underwriters will make an allowance at the rate of £30 per cent. per annum on the insured value for the time actually lost in waiting for tenders. In the event of the assured failing to comply with the conditions of this clause, £15 per cent. shall be deducted from the amount of the ascertained claim.

Warranted free of capture, seizure, and detention, and the consequences thereof or any attempt thereat, piracy excepted, and also from all consequences of hostilities, or warlike operations, whether before or after declaration of war.

To return { per cent. for each uncommenced month if it be mutually agreed to cancel this Policy. / As follows for each consecutive 30 days the vessel may be laid up in port, viz. :— / per cent. if in the United Kingdom not under average. / per cent. under average, or if abroad. } and arrival.

derwriters.

Be it known that

as well in their own Name as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make Assurance, and cause themselves and them, and every of them, to be Insured, lost or not lost, at and from

Upon any kind of Goods and Merchandise, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of and in the good Ship or Vessel, called the

s.s.

whereof is Master, under God, for this present Voyage,
or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the said Ship, or the Master thereof, is or shall be named or called, beginning the Adventure upon the said Goods and Merchandises, from the loading thereof aboard the said Ship

and upon the said Ship, &c.

and shall so continue and endure during her abode there, upon the said Ship, &c. And further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandises, whatsoever, shall be arrived at (as above)

upon the said Ship, &c., until she had moored at Anchor Twenty-four hours in good Safety, and upon the Goods and Merchandises, until the same be there discharged and and safely landed; and it shall be lawful for the said Ship, &c., in this Voyage, to proceed and sail to, and touch and stay at, any Ports or Places whatsoever

without prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns the Assured by Agreement between the Assured and Assurers in this Policy, are and shall be valued at

Touching the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes, that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises and Ship, &c., or any Part thereof. And in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard, and Recovery of the said Goods and Merchandises and Ship, &c., or any part thereof, without prejudice to this Insurance; to the charges whereof we the Assurers, will contribute each one according to the Rate and Quantity of his Sum herein Assured. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in *Lombard Street*, or in the *Royal Exchange*, or elsewhere in *London*. And so we, the Assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured, at and after the Rate of

In Witness *whereof, we, the Assurers have subscribed our Names and Sums assured in London.*

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N.B.—Corn, Fish, Salt, Fruit, Flour, and Seeds are warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are warranted free from Average under Five Pounds per cent.; And all other Goods, also the Ship and Freight are warranted free from Average, under Three Pounds per cent., unless general, or the Ship be stranded.

And it is especially declared and agreed that no acts of the Insurers or Insured in recovering, saving, or preserving the property Insured shall be considered as a waiver or acceptance of abandonment.

Chapter VI.

LOG-BOOKS: PROTESTS: DEPOSITIONS: and other Documents

Ship's Log.—Although the chief officer keeps this log and is bound to use every care in verifying the truth of statements made in it, yet a prudent master will not fail to make periodic examination of its contents. In addition to the routine particulars of the navigation of the vessel day by day, careful and precise entries should be made of the matters following:—

(1.) Any loss or damage whatever happening to the vessel or anything connected therewith, whether occasioned by peril, sea or any other cause.

(2.) Any stranding, or collision or breakdown of machinery, of however slight a character, with full particulars of such damage as is apparent.

(3.) Of the time when the vessel is berthed and notice of readiness given; of any cause operating to hinder or prevent the continuous working of cargo; of the quantity of cargo dealt with on each day and an exact record of all times occupied.

Writing-up of logs.

No entry of an important nature should be made without due consideration. All statements of fact should be set forth in as clear and orderly and precise a manner as possible, no single fact being omitted which may be called for in a subsequent inquiry or action; and it should always be remembered that an inconsistent record of a casualty or a report badly written-up is calculated to seriously prejudice the owner's interests—*e.g.*, in relation to ship underwriters or cargo owners.

Alterations and erasures in logs.

Alterations and obliterations are far too commonly met with in log-books. On a recent B. T. inquiry the Court severely censured a mate for certain erasures and interlineations, with reference to which his explanations were unsatisfactory. In a second case it was reported that "the captain's log had been disgracefully kept, while the engineer's log was not forthcoming at all." And in still

another case where the original log-book was not forthcoming, but a copy was produced to the Court, the inference was naturally enough drawn that the original was being wilfully kept back because it contained something which the master wished to hide from the Court.

Exaggeration, too, is a very common failing amongst those whose duty is to write up logs. A judge in the Admiralty Division gave expression to his views in the following terms :—" It is high time to put a stop to these log-book exaggerations. Mates do not benefit themselves or their owners when they make highly-coloured entries ; but on the contrary they throw suspicion upon their whole case. A log-book purports to be a faithful record of a voyage, and *all entries should be made carefully and thoughtfully, and with as great accuracy as possible.*"

In an important collision case in which the direction of the wind was the material fact in issue the Lord Chancellor referred to the same point :—

" It is of the highest importance that documents of this kind having been originally drawn up in a particular form should have that form preserved, and that there should neither be erasure, obliteration, nor alteration subsequently made. . . . Here the master kept the log. The master swore in his examination in chief that the wind was N.N.E. His attention was called to the log, and it appeared that the original entry in the log was that the wind was N. That entry had been obliterated by another entry in a different ink, in which the direction was indicated by the letters N.N.O., being the German equivalent of N.N.E. Under these circumstances it was impossible to contend that in fact the wind was N.N.E."

Per Westbury L.C. in The Hebe (1866).

Official Log.—Much that has been said with reference to a ship's log applies with equal force to the official log. An official log must be kept on every sea-going ship (except ships employed exclusively in trading between ports on the coast of Scotland) in the appropriate form for that ship, sanctioned by the Board of Trade, and issued to

Entries in official logs.

masters when engaging crews. The following matters (*inter alia*) must be recorded :—

(a) Every conviction of a member of the crew, with the punishment inflicted.
(b) Every offence committed by a member of the crew, for which it is intended to prosecute or to exact a fine, with a statement that the entry was read over, and as to the reply made.
(c) Every offence for which punishment is inflicted on board, and the punishment inflicted.
(d) A statement of the conduct, character, &c., of each of the crew.
(e) Every case of illness or injury happening to a member of the crew.
(f) Particulars of every marriage and death taking place on board.
(g) The wages due to any seaman or apprentice who dies on the voyage, and the proceeds of the sale of their effects.
(h) Every collision with any other ship, and circumstances attending same.

The penalties for not keeping an official log-book in the manner required by the M. S. Act, 1894, vary from 5*l.* to 30*l.*; but either the wilful destruction or mutilation of such a log, or the making of entries of a false or fraudulent nature in it, constitutes a misdemeanor. In the case of foreign-going vessels the master shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver to the shipping master before whom the crew is discharged the official log-book for the voyage in question.

Entries in an official log should be made as soon as possible after the occurrences to which they relate, and the respective dates of the occurrence and of the entry should be stated; if made in respect of an occurrence happening before the arrival of the ship at her final port of discharge they should not be made more than twenty-four hours after such arrival.

A danger in depositions.

Depositions before Receivers of Wreck (*a*). The necessity for accuracy and care is intensified in the case of these depositions. They are often taken by men who are imperfectly acquainted with nautical matters, and who

(*a*) The primary object of these depositions is to set the Board of Trade upon inquiry as to the causes of loss and injury at sea, and to assist them in determining what steps should be taken in any particular case, and for the prevention of the recurrence of similar disasters. They were further intended to supply information and notice of losses and disasters to all persons interested therein.

may themselves, unless watched, perform their duties perfunctorily. Then, again, those who go before a receiver to make depositions are not infrequently, by reason of worry and fatigue to which they have been recently exposed, in a state of mind and body which might well excuse a somewhat hasty and partial narration of the facts of the case. The reading over of the deposition by the receiver to a deponent is too often a matter of form, and does not give a man a fair chance of making necessary corrections.

Yet the matter is urgent, many a case having been seriously prejudiced, and some cases very probably lost, by simple carelessness or ill-timed indifference on the part of an officer deposing to a certain state of facts. These depositions are usually obtainable from the Board of Trade on payment of copying charges, so that they are in a sense public property. Entries made in the log-books should, if necessary, be referred to for the purpose of refreshing the memory of an officer; and it is hardly needful to remark that a deposition should in every material particular agree with the ship's log and the official log.

The unsatisfactory manner in which depositions are sometimes taken down and recorded by Receivers is referred to in a judgment of a late President of the Admiralty Division: "I must say, and I have said it a score of times, that I am always sceptical as to the accuracy of these depositions before receivers. My experience at the bar and on the bench is that there is hardly ever a case in which sailors are not made to say something which they never meant to say. I do not think it is because of any intentional misconduct on the part of receivers of wreck or custom house officers, but it is a fact that the way in which these depositions are taken—in the result— Taking depositions.

does not prove at all satisfactory." (*a*). The pointed allusions to this matter made from the Bench have been unquestionably productive of greater care in their preparation.

It is the duty of a receiver of wreck, or in his absence a justice of the peace, as soon as conveniently may be, to examine upon oath any person belonging to any ship which may be, or may have been, in distress on the coast of the United Kingdom. For every examination upon oath a receiver is entitled to charge a fee not exceeding £1.

A Protest is usually noted by a master on arrival at his port of destination or any port of distress, whenever his ship in the course of the voyage has encountered winds or seas of an extraordinary character such as probably to result in damage to cargo. There is, however, no legal necessity for a protest in the U.K. and legal rights and remedies are not affected by the fact of a protest having been made.

In Continental countries a protest is required as a condition precedent to many legal remedies—*e.g.*, in France and Belgium consignees are debarred from putting forward any claim for damage to cargo unless, within 24 hours of delivery of the cargo to them, they protest and follow this up by a summons in Court within one month. And conversely if the master delivers cargo, accepts his freight and fails to protest within 24 hours in relation to a G/A claim, such claim would be barred. Not only must the protest be made within the 24 hours, but also the notification to the other party.

(*a*) In the course of a collision case, tried at Bristol in May, 1895, a deposition by a look-out man was put to the man, for the purpose of contradicting his evidence in chief; but it transpired that the receiver had taken some rough notes of the man's evidence, got him to sign a blank form of deposition, and subsequently filled the form in partly from memory, partly from the notes. The deposition so drawn up and never read over made the man say what was wholly untrue.

A protest may properly be noted, (1) when, through stress of weather, it has not been practicable to adopt the ordinary precautions in the matter of ventilation, &c., for perishable cargoes, (2) when the condition of the cargo, or any part thereof, at the time of shipment is such as reasonably to lead to the belief that damage or some further damage would result to the cargo during the voyage, but if any protest be made the fact should be endorsed on the Bs/L. Any serious breach of a C/P by the charterer in a foreign port, such as not loading, or unduly delaying the loading, or loading an improper cargo, should always be made the subject of a protest.

Some occasions for noting protests.

Protests are received as evidence in Tribunals on the Continent as a matter of course, but they cannot be made use of as evidence in our Courts of Law in favour of the party making the protest, except by consent of both parties concerned; in this country their chief use is in relation to the adjustment and maintenance of claims upon cargo underwriters.

"Extension" of a protest must be effected within six months of the noting. The statement of facts in an extended protest is usually extracted from the ship's log, with the assistance of any other document containing formal or official information on the matter in issue. The extended protest should contain a careful and accurate narrative of all material facts, and is usually signed by the master, the chief and second officers, the boatswain or carpenter, and one or more of the seamen. Where the cause of the damage is *prima facie* within the exceptions in the C/P or B/L there is no real necessity for any extension so far as the shipowner is concerned, and if owners of cargo require a master to make or extend a protest for their own purposes, they must pay for the same. A master or agent should always stipulate for this

Extension of protests

Payment of extension.

as a condition to his extending a protest for the protection of a cargo owner's interests relatively to the cargo underwriters.

Too much trust is often placed in the virtue and efficacy of a protest. As a matter of fact the making of a protest in no way exonerates a master from the duty of qualifying Bs/L given in respect of goods which are short loaded or damaged or defective at the time of shipment. An endorsement on the face of a B/L of the fact of delay at the port of loading, or an endorsement as to the condition of goods at the time of shipment which are not then "in good order and condition," is better than a score of protests and letters addressed to or letters of indemnity obtained from shippers, charterers or agents.

Survey of stowage.

Surveys.—The practice of calling a survey on hatches, &c., before breaking bulk, more especially where there are no such official surveyors as the London Docks now include in their regular staff, is a very reasonable and proper precaution on the part of a master or owner. If the merchant is represented at the survey, so much the better. Good evidence as to the condition and general appearance of the top stowage will often defeat a claim for short delivery, while independent evidence as to the manner of stowing and dunnaging the cargo as a whole, and of the sufficiency of the means actually used to secure safe carriage will often defeat claims for damage improperly alleged to have taken place on board. The hatches should be taken off in the presence of the surveyors, and a plan of the stowage furnished to them.

Survey before loading.

In case of a stranding or other casualty shortly preceding the loading of such a character as by possibility to render the ship unseaworthy, it is highly desirable that a survey should be held, and a certificate of seaworthiness obtained. On the Inquiry into the loss of the new ss.

Cecilia, the Court found that about three weeks before her foundering in the Mediterranean Sea in fine weather, the vessel had grounded in the port of Gijon and that it was reasonable to suppose the steamer was lost as a consequence of the sudden development of such injury. No survey was held before loading, and if the supposition of the Court was a correct one, the steamer was unseaworthy at the time of loading, the owner being consequently liable for the whole value of the cargo.

Mate's Receipts.—Where a chief officer has signed a receipt for goods at the port of loading, he is personally liable for any deficiency in number proved to exist on the discharge of the goods if, between the shipment and the out-turn, the goods could not have been tampered with. The duties of a chief officer in this relation were defined long ago by a Judge of the Admiralty Court in the following terms:—

"It is the duty of the first mate to receive and discharge cargoes. It is upon his responsibility, and the act which he performs in signing the receipt, that the master signs the bill of lading, thereby rendering his owners responsible to the consignees. This is undoubtedly a duty of the utmost importance, as the degree of responsibility the owners incur proves the obligation of the receipt given by the mate, on which the bill of lading is founded, the master not being supposed to know what is on board. The doctrine I mean to hold is, that the mate, having signed the receipt, is responsible for the correctness of the signature, and that it is a certificate of the fact therein alleged; that he is bound by that signature, and if it should turn out afterwards that there is a deficiency in the *quantum* of cargo which comes to be delivered at the port unless he can show cause to the contrary, I should hold that for that deficiency he is liable."

Illustration.

The mate of a ship loading cotton at Bombay gave a receipt for ninety-eight bales of cotton, and the master signed Bs/L for the same in due course. The ship turned out three bales short at Liverpool, and there was no evidence to show that they had been lost, stolen or mislaid. The owners deducted from the mates' wages the value of the three missing bales, and on action brought by the mate for his wages, it was *held* that the owners were entitled to make that deduction since the responsibility for the receipt rested entirely with him. *The David G. Fleming* (1863).

In the wood trade it is not unusual for the mate to give receipts for goods not actually shipped but merely brought alongside or delivered into the custody of the master or

ship's agent at some distance from the ship. If any receipt in such circumstances is given it should be worded "Received for shipment," and be qualified with the words, "Subject to all exceptions as per C/P."

In the case of grain cargoes in bags—as also with wood goods—the giving of receipts is a matter handled with far too little care and discrimination. It is practically impossible with such cargoes to accurately determine the number of pieces or bags, whilst on the other hand insistence upon signature for numbers makes it an extremely easy thing on the part of a dishonest shipper to defraud the shipowner by overstating the number shipped under deck.

Tallies.—A thoroughly efficient tally in and out of cargo on the part of the ship would avoid an immense number of claims for alleged short delivery (*a*). Mistakes in a tally may lead to an almost endless complication of error, and when laxity has prevailed as well at the port of discharge as at the port of loading, a state of things is reached which pardonably proves from time to time an almost insoluble riddle for a judge and jury.

Correct tally most necessary.

The employment of people of a more or less irresponsible kind and destitute of the necessary experience as tally clerks is to be strongly deprecated. No small degree of intelligence and alertness is demanded for the adequate performance of the work, and it goes for the

(*a*) With reference to short deliveries of case petroleum loaded at Batoum, the British Consul at Batoum, in the course of a communication to the Foreign Office, states that it is not unusual for shippers to load much below the average rate during the first of the lay days, tendering the balance of cargo at perhaps three or four times the stipulated average during the last of the days. This "necessitates the employment of more loading gangs, and consequently more tally men, than the captains can provide out of their officers and crew. Outsiders, who are often unreliable, have therefore to be employed for tallying, and the consequence is that steamers frequently turn out very short of their bill of lading quantities, and are obliged to pay for such shortage. In some instances which have come under my notice such shortages have amounted to from 100 to 500 cases. The only way of guarding against shortages so caused is for owners to protect themselves when framing C/Ps and to instruct their captains to refuse to engage outsiders as tallymen."

saying that absolute integrity must be assured from the very outset (*a*). A tally taken and receipts given as goods are passed overside is undoubtedly the most reliable method, for it is clear that when once the goods have left the ship, or the ship's custody, the shipowner has no longer any protection against the carelessness and malpractices on shore.

Tally by several parties.

Where the merchant and the dock company or the Customs authorities of a port are also taking a tally, it is, perhaps, the more necessary the shipowner should do likewise, in order to check discrepancies between the others. Comparison between the several tally books kept by the several parties should be made, if possible, on board at the end of each day on which work is going on; and it is always well to enter in the ship's log the result of each day's work in the loading or discharging reciting as nearly as possible the quantities shipped or discharged, the time limits actually occupied in working cargo, and the causes of delay, if any.

Whenever a master has any doubts as to the accuracy of the numbers, weights, &c., set out in Bs/L presented to him for signature, he must be sure that the clause, "*weight, number, measure and condition unknown*," is inserted in the B/L; and further that the words, "*shippers' weight*," or the equivalent phrase, according to circumstance, be appended to the recital in the B/L of the weights, &c., of cargo shipped.

What manifests should contain.

Manifests.—A manifest should contain the name or names of the loading ports, and the name or names of the ports for discharge; the name, tonnage, and port of

(*a*) The tallying of such cargoes as wheat in bags offers considerable scope for improper practices. It is such an easy matter to do away with a few score, or even more of the bags during the discharge, and it is often found difficult, apart from any intention on the part of the receivers, to prevent the bags being misappropriated by the labourers. When the cargo has to go into store or lighters before the determination of weight or number disputes will almost invariably arise. The right choice of agents seems to be as important a matter as any in securing a proper out-turn.

register of the vessel; the name of the master; and a detailed account and description of all the goods on board, with the marks and numbers thereof, together with the names of the respective shippers and consignees. The manifest should be in every way completed at the port or ports of loading.

The stringency of the Customs' regulations in certain foreign countries, and the urgent necessity for care and exactitude in making out all shipping documents and returns, is sufficiently evidenced by the single instance of Customs' formalities in vogue in Russian ports:

Documents to be presented at Arrival.—The master's first action on arriving in port is to hand over to the Customs' officers a written declaration, together with the following documents:—

(1.) Bills of lading

(2.) A list of the ship's stores, and articles belonging to the gear and fixtures.

(3.) A list of all passengers.

(4.) A list of the crew.

(5.) A list of articles of property brought by the master and crew.

(6.) A bill of health.

In addition to these documents, the master must also produce a certificate of measurement. If this document does not state the measurement of the vessel, or if it is not produced within a period of time determined by the Customs according to the proposed day of departure, the ship is measured at the master's expense.

The Declaration.—The said declaration has to contain the following details:—

(1.) The description, name, and nationality of the ship.

(2.) The christian name and surname of the master.

(3.) The port or ports of loading.

(4.) The port or ports of destination.

(5.) A list of goods imported without B/L; giving the names of the consignees, number of packages to each consignee, and all details concerning the goods required to be mentioned in the B/L.

(6.) A list of salvage goods on board the ship.

(7.) Enumeration of documents annexed.

(8.) Signature of the master.

In the event of non-production of a declaration, a master may be fined a sum not exceeding 25 roubles

If the master desires to make alterations in the declaration as to goods brought without Bs/L, he must do it before handing in the declaration to the Customs' officials.

The Bills of Lading.—These documents must be drawn up at the port of loading, and are either "to order" or to a specified consignee. If "to order," the bearer of the duplicate is the consignee.

They must contain the following details :—

(1.) The name of the ship, of the master, and of the shipper.

(2.) Port of loading and destination.

(3.) The quality of the goods, by their commercial denomination.

(4.) The quantity of the goods per gross weight; or by number of pieces; or by measure of bulk; or by number of packages, when they express the quantity of the goods.

(5.) If the goods are in packages, the total number of same, nature of package, marks, numbers; or if the address is substituted in lieu of the two latter, then it must be given.

(6.) The signature of the master, or of the agent.

For a B/L not containing the above particulars, the master is fined 10 roubles. But should the missing particulars be given in the declaration, or in documents required for unloading, in invoices, or specifications, or if the general office of the Custom House declares that the incomplete Bs/L really relate to the imported goods, the fine of 5 roubles only is exacted for each imcomplete document.

Correction of errors in the B/L as to denomination, or quantity of goods, or particulars required in para. 5, are allowed if they are certified at the port of loading :—

(1.) By the signature and seal of the agent or the representative of the firm running the ship, if the ship belongs to a regular line.

(2.) By the signature and seal of a ship's broker or of the Custom house, or police authorities, if the ship does not perform regular passages.

Alterations of the total amount, when the single items need no correction, or alteration of single items not affecting the total amount, require no attestation.

Bills of lading are required for all imported goods except :—

(1.) Goods and effects belonging to the master or crew, and those included in passengers' luggage.

(2.) For cargoes consigned to foreign ports.

(3.) For raw materials (loose or in bulk) carried as ballast.

List of the ship's stores and articles belonging to the gear. List of the articles brought by the master or crew.—The number, weight or measure of ship's stores, gear, and articles brought by the master, or the ship's crew, for their personal use, may be given only approximately. Corrections relating to ship's stores and appurtenances may be made even later, on condition, however, that the master reports them before discovery of the same at the search.

On the delivery of the declaration it is to be observed that :—

(1.) For a wrong entry as to B/L (or total number of packages) in this declaration the master is liable to a fine not exceeding 10 roubles.

(2.) If all Bs/L are not presented, the master is fined 10 roubles for each missing B/L. The number of the missing bills is ascertained either by the number of duplicates, or by the persons claiming the Goods that are without B/L. From this fine he is, however, released if he can prove by documentary evidence drawn up and attested by the authorities at the port of loading, that the B/L could not, on the ground of reasonable circumstances, be handed over to him, but were sent on by post to the port of destination.

(3.) If the list of ship's stores or appurtenances, the crew or the passenger list, are not presented together with the declaration, the master is liable to a fine of 5 roubles for each omitted document.

(4.) The master has (under a penalty of 500 roubles) to inform the Customs officials of all inflammable and explosive goods contained in the cargo imported. The place and the order in which these goods are to be kept will then be given by the Custom House. As to explosives or inflammable goods belonging to the ship's gear and appurtenances, they may be declared at the search, but not later, under a penalty of 100 roubles.

Non-declared explosive goods are liable to confiscation

The regulations of different countries vary somewhat in respect of the formalities necessary to be observed in the cases of manifests ; *e.g.*, in the case of ships bound for the United States, two copies of the manifest, and three of the store lists, should be ready as soon as a ship is within four leagues of the coast. Strict accuracy is invariably required, and where the actual quantity carried exceeds that set forth in the manifest, heavy penalties are not infrequently levied, even though the error may have arisen through error or oversight in the Consulate at the port of loading.

The necessity for greater care in the making out of manifests and strict compliance with Custom's formalities is continually being demonstrated.

Illustrations.

(a) A general cargo was loaded at Grangemouth for Santander on board the s.s. *Merannio*, and through a clerical error a shipment of seven casks of fish was entered in the manifest as being 75 casks, although weight, value, &c., of the shipment corresponded with the seven in fact shipped. The error was not detected by the Spanish Consul at the time of clearance. On arrival at Santander a demand was made by the Spanish Customs for payment of 500 pesetas per

package on the apparent short delivery, and in all 34,000 pesetas were so paid. Only after twelve months negotiation and litigation was the penalty cancelled.

(b) A quantity of tin plates was loaded at Swansea for Venice on the s.s. *Tynedale*, but on delivery there was an apparent shortage of 25 boxes on the shipment as per manifest. A penalty of 50 lire per box was levied by the Italian Customs authority in accordance with Article 93 of the Customs Regulations, under which general cargo short or over delivered as per manifest renders the ship liable to heavy penalties. The receivers made no claim, they being satisfied with proof that the boxes in question had never been shipped.

(c) In order to avoid the duty on grain bags, a cargo of wheat on board a steamer was described in the manifest lodged with the Customs authorities at a French port as being "three holds of wheat weighing 4,050,000 kilos and 4,113 bags, 3,963 of which were used for stowage." The Customs objected to this method of declaring the cargo, and the captain was fined fcs. 49,392, being the estimated value of the contents of the 3,963 bags, and fcs. 1,000 for the omission in the manifest. These penalties were confirmed on appeal.

(d) Whilst the ss. *Maroon* lay at Bilbao the steward in making out his manifest of stores for Customs purposes entered an item of 160 packets of tinned provisions instead of 480. The error was a clerical one, but a fine of Ptas. 1,679 was imposed and the stores were confiscated. Through the intervention of the British Ambassador at Madrid the fine was ultimately reduced by one half and the stores restored to the steamer.

(e) The ss. *Parklands* discharged a cargo of coals at Santa Cruz and proceeded thence to Key West for orders. On arrival at Key West the master presented the bill of health, &c., received at Santa Cruz, but was informed by the authorities he need not clear in and out if he remained less than 48 hours in the port. On the third day the *Parklands* left for Cardenas to load, the master having first obtained a bill of health, &c., from the Cuban Consulate. On arrival at Cardenas the master was fined $500 for not having a clearance certificate from Key West on board. With the assistance of the British Consul and the Secretary of State for the Republic the fine was cancelled.

(f) The ss. *Kotonia* loaded about 3,900 tons of salt at Arabat Bay for Newfairwater, but on the completion of the loading there was an empty space in the 'tween decks. This space the mate utilised by storing therein the mooring ropes and hawsers and thereafter the Customs officers sealed the hatches. On the voyage to Newfairwater the ss. put into Algiers for coal and the seals were broken in order to get at the ropes, &c. On arrival at Newfairwater the Russian Consul went on board to survey hatches and it then turned out that the cargo was destined for Russia by rail. In fact, the cargo was on technical grounds refused admission, whereupon the receiver instituted a claim against the steamer and was in the result awarded Mks. 7,202 as damages, these consisting mainly of lighterage and warehousing charges.

SECTION II.

Chapter VII.

CONTRACTS OF CARRIAGE.

(1.)—The Charter-Party.

A C/P may be for one or more voyages or for a definite period of time, or it may effect a demise of the ship for any length of time agreed between the parties.

Stamping of C/P's.

C/P's require a sixpenny adhesive stamp, which should be cancelled by the person last signing. C/P's executed abroad and not duly stamped may be stamped within ten days after their first receipt in the United Kingdom. As a general rule, agreements for the use or hire of a ship not duly stamped at the time of execution may be stamped within seven days on payment of the duty and a penalty of 4*s.* 6*d.*, and after seven days, but within one month after the first execution thereof, on payment of the duty and a penalty of 10*l.*

Trade C/P's.

The coal, grain and wood trades have now their well recognised and more or less generally adopted form or forms of C/P. The terms remaining for settlement in any contract for the carriage of such merchandise are thus mainly confined to rates of freight, and the rates for the loading and/or discharge of cargo. The following is a list of steam C/P forms authorised by the Documentary Committee of the Chamber of Shipping and enforced so

far as user is concerned by the various Protection and Indemnity Associations :—

COAL (which includes Coke and Patent Fuel).

1.—Welsh Coal Charter, 1896.
Amended 16/2/97.
No. 2.

2.—Welsh Coal Charter, 1896. Patent Fuel.
Adapted 16/2/97.

3.—North East Coast (Tees to Berwick) Coal Charter, 1896, exclusive of Coasting (Elbe to Brest included) and all Ports North of the Elbe and the Baltic Trades.
Amended 16/2/97.
No. 2a.

4.—Scotch Coal Charter, 1896 (exclusive Coasting—Elbe to Brest included —and all Ports North of the Elbe and the Baltic Trades).
Amended 16/2/97.
No. 2b.

5.—Welsh Coal Charter, 1896. For Monte Video, Buenos Ayres, &c.
Adapted 16/2/97.

5. (*con.*)—North East Coast (Tees to Berwick) Coal Charter, 1896. For Monte Video, Buenos Ayres, &c.
Adapted 16/2/97.

Scotch Coal Charter, 1896. For Monte Video, Buenos Ayres, &c.
Adapted 16/2/97.

6.—Welsh Coal Charter, 1896. To the Danube, Rosario, Rivers Parana or Uruguay.
Adapted 16/2/97.

North East Coast (Tees to Berwick) Coal Charter, 1896. To the Danube, Rosario, Rivers Parana or Uruguay.
Adapted 16/2/97.

Scotch Coal Charter, 1896. To the Danube, Rosario, Rivers Parana or Uruguay.
Adapted 16/2/97.

7.—The Baltic and White Sea Conference Coal Charter, 1908. (From East Coast of England and Scotch Ports to all Ports in the Baltic, Scandinavia and White Sea).
Code Name: **"Baltcon."**

WOOD.—For all Wood excepting Sleepers, Pitwood, and Wood Pulp.

1.—Wood Charter (Scandinavia and Finland) to the United Kingdom, 1899.
Code Name: **"Scanfin."**

2.—White Sea Wood Charter to the United Kingdom, 1899.
Code Name: **"Merblanc."**

3.—Cronstadt, Riga and Memel Wood Charter to the United Kingdom, 1899.
Code Name: **"Russpruss"**

4.—Pitch Pine Charter, 1906. For Pitch Pine or other wood from the United States Pitch Pine Ports of shipment, to the United Kingdom, European Continent and Mediterranean. *Code Name*: **"Pixpinus."**

GRAIN.—Azoff Berth Note, 1910.

Signing of C/P's.

The terms of a C/P are *prima facie* binding upon all persons who appear on the face of the C/P to be contracting as principals, though they may not be so in fact. And where a C/P is signed by A.B., "as agents for charterers" it is always open to the shipowner to show that A.B. were in fact principals. But where A.B. sign thus, they cannot

afterwards assume as against the shipowner to be in fact principals: and, on the other hand, though described "as agents," and truly so, they may by their subsequent conduct render themselves liable as principals.

Illustrations.

Hutchinson v. *Tatham* (1873).

(a) A C/P was made between the plaintiffs, as owners, and the defendants, "as agents for merchants." The defendants did not disclose the names of their principals within a reasonable time. *Held*, that evidence might be given of a custom that the defendants, under such circumstances, were personally liable. In his judgment Bovill, J., said:—"Apart from the evidence of custom it is quite clear that upon a contract framed as this is the defendants could not be personally liable."

Parker v. *Winlo* (1857).

(b) In an action for demurrage, it appeared that a memorandum for a C/P was expressed to be made "between P. of the good ship *Celerity*, and W., agent for E. W. & Son." to whom the ship was to be addressed. It was signed by W. without any qualification; and on action brought against W., Lord Campbell, in giving judgment, said:—"I can have no doubt myself that the defendant is personally liable. He makes the contract, using apt words to show that he contracts; and the only ground suggested for rebutting his personal liability is, that he says he is agent for another; but he may well contract and pledge his personal liability though he is agent for another. If he had signed the contract, as by procuration for E. W. & Son, he might have exempted himself from liability; but on principle an agent is liable personally if he is the contracting party: and he may be so, though he names a principal.'

Unknown principals.

Where, however, A enters into a C/P as an agent with B, A cannot thereafter assume the relation of principal to B, if B would not have entered into the contract with A, had he known A to be the principal. On the other hand where A enters into a C/P with B "as agent" for undisclosed principals, A cannot throw up the contract with B's principals when disclosed, even though had A known their identity, he would, under no circumstances whatever, have contracted with them.

Over the construction of charter clauses the scope for dispute is limitless. Some of the principal causes are set forth below:—

(1.) Ambiguity of terms.

(1.) The ambiguity of terms and expressions employed, and an obvious lack of definiteness.

Illustrations.

(a) Many C/P's for sailing ships stipulate that the ship shall "load in regular turn as customary." Now, in different ports, "regular turn" has been construed as meaning:—(1) Turn with sailing ships only; (2) Turn with steam and sailing ships; (3) Colliery turn; (4) Turn according to arrival at berth; (5) Turn according to date of entry in the dock book.

(b) When shipowners have agreed to a "discharge with all reasonable dispatch" at ports whose facilities are practically unknown to them, the consequences have on occasion proved most serious. What is reasonable at one place might be the height of unreason at another, and the word affords no reliable criterion or standard of duty whatever. It is difficult to conceive anything more vague and unsatisfactory than a clause giving "usual steamer despatch for loading and discharging."

In the well-known case of the *Nelson Line* v. *Nelson & Sons* (1907), the Lord Chancellor gave expression to his views as to the absurdity of using forms of bill of lading with prolix, inconsistent and complicated exceptions clauses :—

"Here is a document into which apparently the draughtsman has put every conceivable hypothesis that he could, but he has not been content to put into that document the sort of protective clause which might have an operative effect; he has gone on, as if he were a lawyer and were endeavouring to make the document as long as possible, to deal with every part of the subject again. Not unnaturally that sort of composition leads to what undoubtedly is the fact here, that the document contradicts itself. At one time it is said that the defendants could not be liable at all; at another time it is said he may be subject always to this, that, and the other; which shows that the parties intended that the defendants should be liable under certain circumstances. How is it possible for any Court to give a real construction to such a document as that? The known condition of the law is that, unless protected by protecting clauses, the defendants are liable; as a matter of fact they have only put together or jumbled together a number of phrases to which no legal interpretation can be given, and the result is that the state of liability under the law remains what it was, and the defendants are liable." *Nelson Line* v. *Nelson & Sons* (1907).

(2.) The inconsistency of terms in the C/P. **(2.) Inconsistency of terms.**

Illustration.

By virtue of a clause written into a C/P, a cargo of sugar was to be loaded at Trinidad as "customary." By the custom of Trinidad, lighterage is paid for by the shipowners. But by another (printed) clause of the C/P the cargo was to be "brought to and taken from alongside at merchant's risk and expense." *Held*, that the custom was binding upon the shipowner, and that the written clause prevailed as more probably expressing the intention of the parties. *Scrutton* v. *Childs* (1877).

It may here be stated that though it is true the written and the printed parts of mercantile contracts have equal efficacy and are equally binding, yet where there is inconsistency the written clauses will generally prevail since the subject matter thereof has obviously been considered by the parties at the time of entering into the contract.

(3.) Representations of fact, both in C/P's and Bs/L, not being made with due consideration. **(3.) Incorrect statements of fact as to—**

Illustrations.

(a) Goods were shipped under a B/L "on board the steamship *Hibernia*, from Singapore to London, with liberty, &c." The *Hibernia* was in fact an auxiliary screw-steamer, and the voyage proved of much greater duration than would otherwise have been the case. The shipowner was *held* liable in damages to the shipper for loss occasioned by this delay. **(*a*) Character of ship.**

(*b*) **Position of ship.**

(b) In a C/P dated October 19th, 1860, the ship *Martaban* was stated to be "now in the port of Amsterdam," and "to sail with all possible despatch to Newport." As a matter of fact, the ship had arrived at Nieuwediep, distant about sixty miles from Amsterdam, on October 15th, but did not actually reach Amsterdam until the 23rd. All despatch was used in getting the ship to Newport, but on arrival the charterers refused to load. On action brought by the shipowner, it was *held* that the charterers were justified in their refusal.

Cargo capacity.

Where a representation is made in a charter as to deadweight capacity it must be deemed to be a representation of the vessel's deadweight capacity for such a cargo as is contemplated by the parties at the time the C/P is entered into, and great care should be exercised to see that no greater deadweight capacity is guaranteed than the ship is capable of stowing in tons, having regard to the nature of cargo to be shipped. Where there is a guarantee given of a ship's capacity to load a specific quantity of a particular class of goods the shipowner is liable in damages for not carrying the guaranteed quantity unless he can show that the goods actually shipped were not in accordance with the contract terms or were not such goods as were contemplated when the C/P was entered into.

Illustrations.

The Lauderdale (1888).

(a) By charter the s.s. "Lauderdale" was to proceed to Glasgow, and there load "all such goods and merchandise as the charterers shall tender alongside for shipment not exceeding what she could reasonably stow and carry, not less than 2,000 tons deadweight." Charterers tendered a cargo of 2,000 tons deadweight, consisting of railway machinery, including locomotives, tenders, two parcels of coal and general goods. Steamer sailed with only 1,691 tons deadweight, although it was not disputed that she had a carrying capacity up to the guarantee, and it was admitted that 2,000 tons deadweight of the cargo tendered could not have been carried on the vessel unless the coal had been packed with the machinery, which was not done. *Held* by the House of Lords that the full lump sum freight was payable, charterers having tendered machinery in excess of the quantity represented when the charter was entered into, and further held that stowage of coal among machinery without the consent of the shippers of the machinery and of the coal would not have been proper stowage. Lord Watson, in giving Judgment, said:—"Wherever it appears that the precise nature of the cargo which the charterers had it in their contemplation to ship was mutually understood and was in the view of both parties at the time when they contracted, it becomes a matter of reasonable inference that such an obligation as is involved in the guarantee given by the owners was meant to apply only to cargo of that designation."

The Eastgate (1903).

(b) By charter in the 1890 Azoff form the s.s. "Eastgate" was fixed to load a full and complete cargo of barley not exceeding 14,300 units of 400 lbs., and in writing at the foot of the charter was the clause, "Owners guarantee vessel will load not less than 11,700 units of 400 lbs. barley." On previous occasions the steamer had loaded cargoes of barley up to 12,500 units, but on this particular voyage, owing to the exceptionally light and inferior quality of the barley, the "Eastgate" only loaded 11,100 units, the result being that on a falling market the consignees at the port of discharge declined to take delivery and the cargo was thrown on the hands of the charterers, resulting in a loss to them of £753. On action brought against the shipowners to recover this amount as for breach of contract and guarantee, *held* in the Commercial Court and confirmed in Court of Appeal that the shipowners were not liable, the cargo not being of such a kind as was within the contemplation of the parties at the time the contract was entered into.

(4.) The application of the exceptions clauses being too restricted. For instance, unless it is expressly stipulated

that the excepted perils are "always" or "for all purposes under this C/P" excepted, serious loss may result.

Illustration.

Smith v. *Dart* (1894).

By C/P a steamship was to proceed to three safe loading places between Castellon and Malaga, both inclusive, "or so near thereto as she may safely get," and there load a cargo of oranges. The usual exceptions were inserted in the C/P, which contained also the stipulation that if the steamer should not arrive at the first loading port on or before the 15th of December, free of pratique, the charterers to have the option of cancelling the C/P. The steamer arrived on the 13th, but through stress of weather could not communicate with the shore for some days. The charterers elected to cancel. In an action brought by the shipowner for breach of C/P, it was *held* that the excepted perils could not be read into the clause dealing with the arrival of the ship, and that the charterers were entitled to cancel.

Operation of cesser clause.

(5) The operation of a cesser of liability clause under the varying conditions of each particular C/P. Assuming the cargo to be of adequate value, and a comprehensive lien to be given the shipowner for freight, dead freight, detention, and demurrage (at both loading and discharging ports) by the terms of both C/P and Bs/L, the cesser clause is generally found a harmless enough device. The rights of a shipowner relative to recovery of demurrage incurred at the port of loading are all too often left in obscurity: if it is to be recoverable from the consignees of the cargo, the Bs/L should make that clear beyond all doubt.

The main rule to be derived from the cases as to the interpretation of the cesser clause in a C/P has been thus stated by Lord Esher in *Clink* v. *Radford* (1891):—

"The court will construe the cessor clause as inapplicable to the particular breach complained of, if by construing it otherwise the shipowner would be left unprotected in respect of that particular breach, unless indeed the cesser clause is expressed in terms that prohibit that conclusion."

And in the same case, Fry, L.J., said:—"The rule that we are *prima facie* to apply to the construction of a cesser clause, followed by a lien clause, appears to me to be well ascertained. It is simply this—that the two are to be read, if possible, as co-extensive. If that were not so we should have this extraordinary result: There would be a clause in the C/P, the breach of which would create a legal liability; there would then be a cesser clause destroying that liability; and there would then come a lien clause, which did not re-create that liability in anybody else. What would be the use of a stipulation if the moment it was created it was taken away, and was not laid on somebody else's shoulders? Such construction would be most unreasonable."

Some of the principal cases dealing with the cesser clause are here shortly outlined :—

Gray v. *Carr* (1871).

(a) By a C/P for a voyage from Sulina to London fifty running days were to be allowed for loading, and ten days on demurrage over and above the lay days. Owners to have an absolute lien on cargo for all freight, dead freight and demurrage, and charterer's responsibility to cease on shipment of the cargo, if of sufficient value to cover freight, &c. The ship was detained at the port of loading during the 10 days on demurrage, and for 18 days beyond the 10 days. By the Bs/L "freight and all other conditions or demurrage for the said goods as per C/P." The shipowners claimed from the holders of the Bs/L 10 days' demurrage and damages for detention during 18 days, but *held* not entitled to the latter.

Kish v. *Cory* (1875)

(b) By a C/P for the carriage of a cargo of coal from Hull to Alexandria, the cargo was to be loaded in 13 working days, and 10 days on demurrage at 4d. per registered ton per day. "Charterer's liability to cease when ship is loaded, the captain or owner having a lien on cargo for freight and demurrage." *Held* that the charterer on loading the cargo was discharged from liability for demurrage incurred at the port of loading.

Clink v. *Radford* (1891).

(c) By C/P the ship was to load in the usual and customary manner, and proceed therewith, &c. "Charterer's liability under this C/P to cease on the cargo being loaded, the owners having a lien on the cargo for the freight and demurrage." The ship was detained 16 days at the port of loading beyond the usual and customary time. In an action by the shipowner against the charterers to recover damages for that detention, *held* that the cesser clause did not except the charterers from liability for the delay, the word "demurrage" not covering damages for undue detention on the loading.

Hansen v. *Harrold* (1894).

(d) A ship was charterered for a lump freight for a carriage of a cargo of oats from New Zealand to London. By the C/P the liability of the charterers was "to cease on the vessel being loaded, the masters and owners having a lien on the cargo for all freight and demurrage under this C/P." The charterers re-chartered, the cargo was shipped, and a B/L given by which freight was payable in London at a certain rate per ton on the weight of the cargo as delivered." By reason of a diminution in weight of the cargo during the voyage the B/L freight for which the shipowner had a lien did not wholly cover the lump freight as per C/P. In an action by shipowners against charterers, *held* that the charterers were liable, the cesser clause only relieving them from liability to the extent to which the shipowner had obtained a lien on the cargo. The broad result of this case appears to be that where by the terms of the B/L the shipowner has no lien on the cargo for demurrage incurred at the port of loading. the charterers cannot successfully invoke the aid of the cesser clause.

Permanent obstruction.

If from any cause the approach to the place of loading or discharge, or to the particular wharf or dock named in the C/P, be "permanently" obstructed, the shipowner is not bound to wait until he can proceed to the place named, but only to proceed to the nearest safe place, and lay days begin to count as from the arrival of the ship at that nearest safe place.

Illustrations.

Schilizzi v. *Derry* (1855).

(a) Where a sailing ship was chartered for Galatz or Ibrail, "or so near thereto as she may safely get," and on arriving at Sulina on November 5th, found there was then insufficient water to cross the bar at Sulina, and so left, after waiting 36 days. *Held* (on its being proved that there was sufficient water on January 7th) that the ship had not got as near to Galatz as she safely could, and that the shipowner was liable to damages for breach of the C/P.

(b) The s.s. *Euxine* was chartered to load a cargo of timber in the Baltic, and to proceed therewith to London, St. Katharine Docks, or so near thereto as she might safely get. Both shipowners and charterers did their best to obtain a discharging berth for the ship at the St. Katharine Docks, but, owing to the crowded state of the same, the dock company refused admittance, and stated that they could not give a berth for several months. The shipowners then discharged the cargo into lighters, great delay being incurred, but the charterers refused to pay either lighterage or demurrage. *Held*, that the ship having been prevented from entering the docks by a "permanent" obstacle, and the shipowners having brought their ship as near as she could safely get to the agreed place of discharge, they were entitled to demurrage and damages for detention. *Nelson* v. *Dahl* (1879).

"Safely."

The word "safely" has relation as well to the condition of the ship when loaded as to her getting to the place of loading, and a shipowner is under no obligation to load more than his ship can safely leave the port with.

Where there has been such unreasonable and culpable delay in bringing the ship to the loading port as to practically frustrate the object of the charterers in regard to the ship's employment, the latter are entitled to throw up the C/P, and sue the shipowner for damages; but the mere fact of neglect on the part of a shipowner to use due diligence in proceeding to the loading port does not entitle a charterer to refuse to load.

Bringing cargo to place of loading.

Any difficulty or hindrance which the charterer may experience in getting the cargo "alongside" is immaterial so far as affording justification for delay caused thereby to the ship. The operation of getting cargo to the place of shipment is, generally speaking, quite outside the contract of carriage, and, therefore, the exceptions contained in the contract itself do not apply.

Illustrations.

(a) A cargo of rails was to be loaded in the "customary manner" at the East Bute Docks, Cardiff. By the C/P, "detention by frosts, floods, &c.," was not to be reckoned as laying time. Unknown to the shipowner the rails had to be brought from a wharf in a canal situated some distance from the dock. The loading was delayed by the freezing of the canal. On action brought by the shipowners for demurrage, it was *held* that, "the stipulation exonerating the shippers applies only to a detention from the causes there mentioned after the cargo has been brought to the place of loading." Judgment for the shipowners. *Kay* v. *Field* (1882).

(b) In a case where the C/P contained an exception of "frost preventing the loading" and delay, through frost, took place in bringing the cargo to the agreed place of loading, Lord Selborne said, "It would appear to me to be unreasonable to suppose that the shipowner has contracted that his ship may be detained for an unlimited time on account of impediments, whatever their nature may be, to those things with which he has nothing whatever to do, which precede altogether the whole operation of loading, but which belong to that which is exclusively the charterer's business." *Grant* v. *Coverdale* (1882).

Gray v. *Powell* (1895).

(c.) The *Cedric* was chartered to load a cargo of phosphate rock ex s.s. *Talbot*, and was ordered by the charterers to the Millwall Docks to load on the 11th January. The charterers had no control of any sort over the steamer, which did not, in fact, arrive till the 25th January. The loading was to take place "as fast as steamer can deliver." In an action by shipowners for damages for detention, *held*, the shipowners entitled to recover for 14 days' detention.

Impossibility of providing cargo no defence.

A charterer does not ordinarily escape from his obligations under a C/P by the fact that it has become impossible for him to provide the cargo agreed upon; and this is so whether such impossibility arises from natural causes or the intervention of a foreign Government.

Illustrations.

Blight v. *Page.*

(a) A ship was chartered to load a full and complete cargo of barley at Libau but the loading was prevented by an order of the Russian Government forbidding the export of barley. In the absence of any exception in the contract of carriage protecting the charterer the order was, *held*, to be no defence to an action for damages brought by the shipowner against the charterer for not loading.

Taylor v. *Caldwell* (1863).

(b) But "where from the nature of the contract it appears that the parties must from the beginning have known that it could not be fulfilled unless some particular specified thing continued to exist; then, in the absence of any express or implied warranty that the thing shall exist, the contract is not to be construed as a positive contract," but a conditional one.

The methods of expressing the limit of time for the loading or discharge of cargo are many and various, occasionally giving rise to trouble and difficulty.

Seldom has a more singular construction been put by any Court of Law upon a clause in a shipping document than that applied to the clause:—

Working Day of 24 Hours.—This term was construed by the House of Lords in the case of the "Forest," and it must now be deemed to be settled law that where by the custom of the port to which the term has application a working day consists of eight hours, a "working day of 24 hours" = three ordinary working days of eight hours each.

Illustration.

The Forest (1898).

By C/P dated 14th December, 1897, the s.s. *Forest* was to load iron ore at Seville for Cardiff, "charterers or their agents to be allowed 350 tons per working day of 24 hours, weather permitting (Sundays and holidays excepted), for loading and discharging, same to be reversible, and to be averaged voyage by voyage to avoid demurrage.....s.s. to work at night if required, also on Sundays and holidays, such time not to count as lay days unless used." Charterers contended, in reply to a claim for demurrage, that whereas the working day at Seville was from 6 a.m. to 6 p.m. only the twelve working hours counted, and a "working day of 24 hours" = two ordinary working days. This contention was upheld in three Courts—finally in the House of Lords.

Where **Holidays** are excepted in the computation of time occupied in the loading or discharging, those days only which are generally observed as holidays throughout the country or within the more limited area of the port are to be reckoned as such. Time arbitrarily taken by colliers and other workmen ought not to be reckoned as holidays.

Illustration.

By colliery guarantee dated March, 1895, merchants agreed to load the s.s. *Lomas* with a cargo of about 2,600 tons of coal at a usual tip at the Alexandra Dock, Newport, "in 96 running hours after steamer is fully unballasted, available for loading and written notice given to merchants." Bank, Custom House and other holidays, fete days, holidays of colliers or other workmen were excepted. The Whitsuntide holidays intervened, and merchants contended that Whit-Tuesday was a colliers' holiday. On the trial it was proved that colliers generally absented themselves from work on Whit-Tuesday, but it was *held* that this fact was insufficient to bring Whit-Tuesday within the colliery guarantee exceptions. *The Lomas* (1896).

Generally speaking, a ship is bound to proceed on the most direct (provided that be a reasonably safe) course to her agreed destination. The shipowner's obligation to proceed direct is now-a-days usually qualified and the following clause is recommended for insertion in all C/Ps and Bs/L.:—

"With liberty either before or after proceeding towards the port of discharge to proceed to and stay at any ports or places whatsoever, although in a contrary direction to, or out of or beyond the route to the said port of discharge once or oftener in any order, backwards or forwards, for the purpose of loading or discharging cargo or passengers or for any purpose whatsoever, and all such ports, places and sailings shall be deemed included within the intended voyage."

Liberty to call at any ports.

A mere liberty to call at *any* ports or places in *any* rotation affords very limited protection. Only such ports as lie on or near to the ordinary track of the voyage agreed upon are included, and there must be no such delay as would be inconsistent with the purposes of the chartered voyage. Ports of call should be taken as nearly as possible in their geographical order.

Illustration.

Bs/L were signed for a part cargo of oranges by the s.s. *Zena*, from Malaga to Liverpool, and by the Bs/L permission was given the shipowner to "proceed to and stay at any port or ports in any rotation in the Mediterranean for the purpose of delivering cargo or passengers, or for any other purpose whatsoever." On leaving Malaga, the master, without the knowledge of the shippers, proceeded to Burriana, about 200 miles to the northward, and thence to Liverpool. *Margetson* v. *Glynn* (1891).

On arrival at the latter port the Malaga fruit was practically worthless, the voyage having been prolonged by the deviation to the extent of nearly three weeks. *Held*, that the shipowner was liable for the loss thereby sustained by the merchants. "Where general words are used in a printed form which are obviously intended to apply, so far as they are applicable, to the circumstances of a particular contract, which particular contract is to be embodied in or introduced into that printed form, I think you are justified in looking at the main object and intent of the contract, and in limiting the general words used, having in view that object and intent." (Per Herschell, L.C.).

Deviation: What it is.

Deviation is departure without justification and under no necessity from the proper and usual course of an agreed voyage, whereby the character and the incidents of such voyage are altered.

"A deviation from necessity must be justified both as to substance and manner; nothing more must be done than what the necessity requires. The true objection to a deviation is not the increase of the risk. If that were so it would only be necessary to give an additional premium. It is that the party contracting has voluntarily substituted another voyage for that which has been insured." Per Lord Mansfield, in *Lavabre* v. *Wilson* (1779).

Apart from stipulation to the contrary, a shipowner is liable for all loss or damage to cargo subsequent to, and whether or not directly consequent upon, any deviation from the agreed course of the voyage. The shipowner becomes for all practical purposes an insurer of the goods, and the benefit of the exceptions contained in contracts of carriage is thereby lost to the shipowner.

Illustration.

Scaramanga v. *Stamp* (1879).

The ss. *Olympias*, whilst in course of a voyage from Cronstadt to the Mediterranean, laden with a cargo of wheat, fell in with a disabled steamer in fine weather in the North Sea, and agreed to tow the steamer to the Texel for 1,000*l*. The C/P of the *Olympias* did not give liberty to deviate to save property, but contained usual exceptions, including "perils of the seas." During the salvage services the *Olympias* stranded on the Terschelling Sands, and became a total loss through perils of the seas. *Held*, that the deviation constituted a breach of the C/P and that the shipowner was liable for the value of the cargo.

Justifiable deviation.

A master is justified in deviating in order to effect necessary repairs, or to avoid an impending or actually existing danger to his ship or cargo, or when in reasonable apprehension of the safety of either. A deviation for the

purpose of saving life has always been deemed to be justifiable, but only so long and to such extent as is actually necessary to accomplish that particular purpose.

Shipowners too little realise the measure of obligation imposed upon them by the ordinary form of B/L to proceed direct from the loading port to the port of ultimate destination. In the Black Sea and Azov it is not unusual for a master to sign direct Bs/L at one port and then proceed to another port out of the direct geographical route to complete. Where there is a second or third loading port outside of any well recognised rotation the proper course for the master is to qualify the Bs/L by the words, "*via* and "; or, "to complete cargo at any other ports." More particularly in the matter of bunkering, deviations of a more or less gross nature are frequently in evidence—*e.g.*, a steamer sails from Cardiff with a cargo of coals for the River Plate and bunker coals sufficient to carry her out, but in order to avoid the purchase of expensive bunkers in the River Plate for the voyage home puts into Las Palmas and fills up there. The deviation here consists in the putting in for bunkers, not for the immediate voyage in progress, but in view of an ulterior voyage.

The consequences of a "deviation" attach in ways not always realized, *e.g.*, it would appear that in the case of a new steamer to manœuvre her in a waterway or off a coast for the purpose of adjusting compasses after the first voyage had commenced would constitute a deviation from that voyage: and it must be remembered that there may be technical deviation through inactivity or slackness on the part of the master, as when after Bs/L have been signed the master fails to secure an adequate crew or the ship herself not being ready to leave on her voyage has to be shifted from the loading berth to buoys

or another berth to await a crew or the necessary repair.

As to what constitutes a deviation and what constitutes unseaworthiness highly technical discussions are constantly raised: perhaps no matters connected with shipping give rise to questions more frequently, and the mention of bunkering as being the operative cause of occasional unjustifiable deviation suggests the advisability of pointing out that in connection with unseaworthiness the absence of a proper supply of bunkers not only at the commencement of a voyage but on each successive stage may make a ship unseaworthy, and render the shipowner liable in damages to an indefinite extent. The case of the *Vortigern* (1898) deserves special consideration, and is shortly summarised below:—

The Vortigern (1898).

Under charter dated 6th August, 1897, the *Vortigern* was fixed to load at Manila or Cebu a full cargo of Phillipine produce and deliver same at Liverpool —"Dangers of navigation or machinery, negligence, default or error in judgment of the owners, pilot, master and crew excepted." Under the Bs/L steamer was at liberty to call at any port or ports in or out of the customary route in any order, to receive and discharge coals, and the exceptions clauses were substantially similar to those in the charter. The *Vortigern* left Manila on the 14th of October, 1897, with 155 tons of coal in her bunkers. A further 20 tons was taken at Cebu, from whence she started on her voyage. On October 27th she arrived at Labuan with 3 tons left, and on October 29th left that port with 470 tons of Labuan coal. On November 12th she reached Colombo with 138 tons of Labuan coal left, and the engineer then discovered that instead of burning his normal rate of 18 tons per day of ordinary Welsh coal he had been burning over 25 tons per day of Labuan. At Colombo the steamer filled up with 300 tons of Indian coal and left on the 13th November with 438 tons of coal on board. On 24th November the steamer was off Perim and finding there was 200 tons then left the master did not put in for a further supply. On the 29th November instead of there being 85 tons left, as there should have been, only 40 tons were left, necessitating some 50 tons of the cargo of copra being mixed with the coal and consumed as fuel. Action was taken for recovery of 610*l*, the value of the copra, on the ground that the steamer was unseaworthy, she being insufficiently supplied with coal for the voyage, *Held*, in the Admiralty Court and Court of Appeal that the owners were liable on the ground that there was an implied warranty that the steamer was seaworthy not only at the commencement of the voyage but for each stage of the voyage, and that the steamer having an insufficient quantity of bunkers on leaving Colombo to carry her to Suez was "unseaworthy" as from Colombo. In giving judgment in the Court of Appeal, A. L. Smith, L.J., said:—"In my judgment when a question of unseaworthiness arises between either a steamship owner and his underwriter upon a voyage policy or between a steamship owner and a cargo owner upon a contract of affreightment and the underwriter or cargo owner establishes that the ship at the commencement of the voyage was not equipped with a sufficiency of coal for the whole of the contracted voyage, it lies upon the shipowner in order to displace this defence to prove that he had divided the voyage into stages for coaling purposes by reason of the necessity of the case and that at the commencement of each stage the ship had on board a sufficiency of coal for that stage—in other words was seaworthy for that stage. In each case it is a matter for proof as to where the necessity of the case requires that each stage should be."

If by C/P a ship is to deliver at a particular place, and the approach thereto being temporarily closed or obstructed, the master voluntarily discharges cargo into lighters in order to prevent detention, the ship must bear the expense thus incurred.

Lightening ship to reach place of discharge.

The following examples will serve to show how the Courts have dealt with cases in which there has been a dispute whether or not a ship has fulfilled her obligation to proceed to——— under the C/P, when in fact prevented by want of water from reaching that destination. The question as to who shall bear the expense of lightening is, of course, a frequent incident to such disputes.

Illustrations.

(a) Where by C/P. it was agreed to carry a cargo of deals from Soderhamn to Sharpness or "so near thereto as she may safely get, at all times of tide and always afloat," and on arriving in King Road, the then state of the tides would not allow the ship to get to any wharf at Sharpness, it was *held* that the voyage was at an end, and that lay days began to run from the arrival of the ship in King Road. In this case the shipowners offered to lighten, but the merchants refused, and hence the question of liability for the cost did not arise. *Horsley v. Price* (1883).

(b) Where by C/P a vessel was to "proceed to a safe port on the Continent between Havre and Hamburg as ordered, or so near thereto as she may safely get," and the port of discharge named in the B/L was Koogerpolder, to reach which one-third of the cargo would have had to be discharged, and the consignee was not ready to receive the surplus cargo at Nieuwediep, the nearest safe place of approach to Koogerpolder for the ship in her loaded state, it was *held* that the master was entitled to treat the voyage as at an end at Nieuwediep, and that the shipowner was entitled to recover from the merchants the cost of lightering cargo up to Koogerpolder. *Capper v. Wallace* (1880).

(c) A vessel was chartered to carry a cargo of grain from Baltimore to Falmouth for orders, and "thence to a safe port in the U.K., as ordered, or as near thereunto as she can safely get, and always lie and discharge afloat." The vessel was ordered to Lowestoft, but by reason of her draft she could not lie afloat when loaded in Lowestoft Harbour. The consignee offered at his own expense to lighten the vessel in the roads, but the master refused to proceed to Lowestoft, went to Harwich as the nearest safe port, and there discharged cargo. *Held*, that the master was justified in doing so, and that evidence that it was the custom of the port of Lowestoft for vessels to be lightened in the roads before going into the harbour was inadmissible. *The Alhambra* (1881).

(d) But where the C/P contained a similar clause to that in the *Alhambra*, and the master of the chartered ship, being bound for Glasgow, discovered on his arrival off Greenock that she would not be able to lie afloat in Glasgow Harbour at all times of tide, it was *held* that a request by the consignee to be allowed to discharge one-fifth of the cargo at Greenock at his own expense, and so lighten the ship sufficiently for her to proceed in safety, was a reasonable request, and that the master was bound to lighten, and afterwards proceed to Glasgow with the remainder of the cargo. *Hillstrom v. Gibson* (1870).

Where a ship is to discharge at a particular wharf, or dock, or berth, the ship is bound to a strict performance of

what she has contracted to do, though it may involve her in very serious liabilities in the matter of both expense and delay. Conditions should be attached to the obligation to proceed to a particular berth or wharf when there is any doubt whatever as to the feasibility of reaching such destination—*e.g.*, "if there be sufficient water on first high tide after arrival."

"If sufficient water."

It has been said that the words "if sufficient water" mean something more than the "always afloat clause." "I can see no other way of construing them than to put on them a meaning which shall restrict what would be the meaning of the clause if they were absent. It seems to me they are introduced in the interest of the shipowner, and restrict the generality of the power to name a dock. The obligation of the shipowner is to proceed to the dock named, if there is sufficient water to enter the dock *when the order is given*, and if there is not then sufficient water, the ship is not bound to discharge in the dock named." (Per Cave, J.).

Merchant must choose promptly.

The particular place, as distinguished from the port, of discharge is generally left an open matter in the C/P. The ordinary practice of the port of discharge then becomes material; if there are several usual places for the discharge of the particular goods carried, a merchant to whom the whole cargo is consigned has the privilege of naming the specific place—with this qualification, however, viz., that there must be no unreasonable delay on his part in making the choice. If there has been such delay, and meantime the ship has been taken to a usual place of discharge other than that ultimately chosen by the merchant, the latter must pay all the expenses of shifting the ship, and compensate the owner for any delay thus incurred. Where there are several consignees the shipowner selects the wharf or berth for discharging, but must, of course, select a usual and proper one.

If wholly unreasonable delay would be suffered by a ship in going to the place named by the merchant, another usual place being more readily available, the shipowner may refuse to proceed as ordered, or may comply with the merchant's requirements "under protest," and claim damages, thereafter. **And must act reasonably.**

When the contract of carriage is silent as to the time for the payment of freight, the law implies an agreement to pay concurrently with delivery of the goods at the port of discharge. **Time for payment of freight.**

Where the consignee has not promptly taken delivery the right to full freight would not appear to be complete unless and until the shipowner has been ready and willing to deliver the goods during the whole period allowed by the C/P to the consignee to take delivery.

Speaking generally, the consignee is not entitled to his goods until he has made a tender of the freight due thereon. Where the C/P recites that the shipowner shall deliver "on being paid freight at the rate of per ton delivered," the consignee, if so required, must pay freight concurrently with delivery of the goods. In other words, as the cargo is delivered ton by ton the shipowner may, if he pleases, demand a proportionate payment of freight. Where, however, the freight is payable "on right and true delivery of the cargo," no legal right to sue for the freight appears to exist until the whole cargo has been delivered. Payments of freight generally on account are universally required and with good reason, inasmuch as delivery without any payment on account would negative the rights given under the lien clause.

In order to be entitled to freight, delivery must be made at the place agreed upon. In case the ship does not reach her port of discharge, but stops short from any cause at an intermediate port, the shipowner cannot claim *pro rata* **No freight where cargo is abandoned.**

freight for the transit actually effected. If, however, he transhipps, or otherwise arranges for the forwarding, he may yet earn his freight; but abandonment at a place other than the agreed place of discharge does away with any claim to freight or distance freight on the part of the shipowner, even where the abandonment has been induced by the operation of a peril or risk for which the shipowner is not responsible.

Illustration.

The Cito (1881). A ship laden with a cargo of sugar from the West Indies, and bound to Falmouth for orders, met with very heavy weather in the Atlantic, and sustained damage of so serious a character as to justify her abandonment, which course was in fact adopted. Subsequently the derelict was picked up by a steamer and towed into Falmouth, where the owner of the cargo took possession. In an action brought by the shipowner for freight, it was *held* that by reason of the abandonment he had lost all claim to freight.

Pro rata freight. If, however, the owner of the goods voluntarily accepts delivery at an intermediate port in such a manner as to raise a fair inference that he intentionally dispenses with the further carriage of the goods, he will become liable to pay *pro rata* freight. No presumption of a promise on the part of the merchant to pay *pro rata* freight can be drawn where the only choice open to him was either to accept the goods or abandon them.

Quantum of freight. "As a general principle, freight, in the absence of special agreement to the contrary, becomes payable only on so much cargo as has been both shipped, carried, and delivered. If less has been shipped than has been delivered, as in the case of cargoes which heat under sea water damage, freight is payable on the lesser quantity shipped. If less has been shipped and carried than has been delivered, as in the case of goods which are compressed during the voyage, and expand on being unloaded, freight is payable on the compressed, and not on the expanded, measurements. If, on the other hand, less has been delivered than shipped, as in the case of goods lost on the way, then freight would be payable only on the quantity delivered." (Per Bowen, L.J.)

Freight due in full on damaged goods. Full freight is due on goods which on arrival at their destination are in a damaged or deteriorated condition, subject, of course, to the right of the consignees to counterclaim for such damage. Freight is not, however, payable on goods which between the time of shipment and final

delivery have suffered a change in character and are practically valueless.

Illustration.

Merchants in London shipped on board the *John Duthie* 300 casks of cement to be carried to Sydney. The B/L contained the clause "Freight to be paid within three days after arrival of ship, and before delivery of any portion of the goods specified in the B/L." On the night of the ship's arrival at her destination a fire broke out, and in order to put it out the ship was scuttled, the cement being thereby destroyed as cement. The consignees refused to accept it or pay freight. *Held*, that they were under no obligation to do so. *Duthie* v. *Hilton* (1868).

Lump sum freight.

Where it has been agreed that a lump sum freight shall be paid on delivery of the cargo, that lump freight is due in full though the ship may load a short cargo, or though part of the cargo be jettisoned, or stolen, or lost overboard on the voyage. If there was default in not shipping a full cargo or any other breach on the part of the master that may be matter for a counterclaim; but the lump freight is due to the shipowner on final delivery of the cargo loaded, and this is so whether it be the cargo mentioned in the C/P, or another and a different cargo.

Advance freight.

Where a part of the freight is, according to the usual practice, payable in advance, and the cargo is lost in transit, if such advance freight has been actually paid, it is not recoverable by the merchant; if not so paid, it is, apart from stipulation to the contrary, still legally recoverable by the shipowner. But in the case of *Dufourcet* v. *Bishop* (1886), Denman, J., said:—

"Though the cases establish as a general rule that money paid by way of advanced freight cannot be recovered back on the failure of the voyage, they by no means establish that where the cargo owner has, as part of the price of the goods, paid, or become liable to pay, a sum for freight in advance, and the goods are lost by the negligence of the shipowner, he may not as part of his damages be allowed, as against the shipowner, an amount equal to the freight so advanced, and if he happens to be partially indemnified against that loss by an insurance of that very amount of advanced freight, I can see no reason why the insurer of that amount should not be entitled to sue in his name for it as part of the damage which the cargo owner, but for the insurance, would have sustained by the defendant's negligence."

Where an advance is made at the port of loading, the question sometimes arises whether it is on account of

freight or merely by way of loan to meet ship's disbursements: each case must be decided on a fair consideration of the charter terms, and of the facts leading up to the advance. If by the C/P it is the merchant who is to insure the advance and deduct the cost of insurance from the freight, that is almost conclusive evidence that it was on account of freight.

The following cases are of interest as showing when advance freight is recoverable:—

Smith v. *Pyman* (1891).

(a) A cargo was shipped on the *Gamma* under a C/P, wherein it was stipulated:—"One-third freight if required to be advanced, less 3 per cent. for interest and insurance." Shortly after the commencement of the voyage the vessel was wrecked and the cargo lost. Subsequently to the loss, the shipowner required payment of advance freight under the above clause. *Held*, that the requirement by the shipowner was a condition precedent to the liability of the charterers to pay advance freight; that the requirement was made too late, and that the charterer was not liable.

Oriental ss. Co. v. *Tylor* (1893).

(b) A cargo of coals was shipped under a C/P for a voyage from Cardiff to Barcelona, freight being payable on B/L quantity, less 3 per cent. in lieu of weighing, "the freight to be paid as follows:—One-third on signing Bs/L, less 3 per cent. for interest and insurance . . . and the remaining on unloading . . . all liability of Tylor and Co. to cease as soon as they have shipped the cargo and paid advance of freight . . ." The Bs/L were to be signed within 24 hours after the coals were on board. The ship left her loading berth before the charterers were ready with their Bs/L, but before she had reached the dock gates she sank in consequence of her side being pierced by her anchor. The charterers then refused to present Bs/L for signature. On action by the shipowner for 374*l.*, the one-third freight, it was *held* they were entitled to recover that amount, the loss of the cargo not relieving the charterers from their liability to present Bs/L.

"Subject to insurance."

When under the C/P any portion of the freight is made payable in advance, "subject to insurance," this term means no more than that the cost of insuring the amount advanced shall be deducted from the advance. It is for the merchant, and not the shipowner, to insure such advance, though the latter bears the cost.

"Final sailing."

Where freight is to be paid on "final sailing," that condition is fulfilled when the ship, in all respects ready for sea and fit for the voyage, has got well clear of the port of departure in pursuance of the ordinary course of that voyage.

Illustrations.

(a) By C/P for the carriage of a cargo of coals in the *General Chasse*, from Cardiff to San Francisco, the freight was payable "three-fourths in cash on the final sailing of the vessel from the port of loading." The vessel, completely loaded and in every respect ready for sea, whilst being towed down the Cardiff Drain, grounded, and was thereafter towed back to the Bute Dock, but was refused admittance, and subsequently became a wreck outside the dock gates. On action brought for the three-fourths freight, *held* the shipowner not entitled to recover, the vessel never having got outside the limits of the artificial port. *Roelandts* v. *Harrison* (1854).

(b) Where a vessel after loading a cargo of coals at Penarth Dock for Bombay was towed out into the Bristol Channel about three miles, and there anchored, the weather being threatening, but in a subsequent storm broke adrift, and drove on to Penarth Beach, it was *held* that the ship had finally sailed, though she had never got outside the ambit of the port of Cardiff, construing the word "port" in its fiscal or custom-house sense. *Price* v. *Livingstone* (1882).

Time charter.

In the case of a Time Charter, the time runs continuously as against the charterer, subject, of course, to any exceptions in the charter.

Demise or no demise?

The question sometimes arises whether under a particular charter there is in reality such a complete parting with possession of and control over a ship as to amount to a demise. According to the determination of this point the liability of the shipowner of necessity greatly varies.

Illustrations.

(a) The ss. *Sultan* was chartered by the owner to Gilchrist & Co., as agents for the Mexican Gulf Steamship Co., for the space of four months; the captain, officers, and crew were to be appointed and paid by the charterers, and the captain was to be under their orders; the charterers were to indemnify the owner from all liability arising from the captain signing Bs/L; were to pay for all coals, provisions, port charges, and all other charges whatsoever, and at the expiration of four months were to purchase the vessel on terms agreed. The owner undertook to insure the vessel, to keep her hull and machinery in good order, and reserved the right to appoint the chief engineer. *Held* (in the House of Lords) that the owner had parted with the control over the ship, and that the master was not his servant, but the servant of the charterers. As a consequence of this decision, the claim against the registered owner for loss of cargo, due to the unseaworthiness of the ship, was rejected *Baumvall, &c.* v. *Furness* (1891).

(b) By C/P dated 7th April, 1893, the ss. *Boston City* was chartered for six months, the charter stipulating that "the captain and crew, though paid by the owners, shall be the agents and servants of the charterers for all purposes. whether of navigation or otherwise." In signing Bs/L it was expressly agreed that "the captain shall only do so as agent for the charterers." The owners appointed the master and officers, found the crew, and continued to have powers of dismissal and new appointment. During the term of six months the master signed Bs/L for a cargo of coals at Cardiff for Rio Janeiro, but, by the fraud of the charterers, was induced to go to Buenos Ayres, and deliver the cargo there without production of the Bs/L. On action brought against the shipowners by the holders of the Bs/L for value, *held* that the shipowners were liable, and that, notwithstanding the above clauses, the master remained in fact the servant of the owners. *Manchester Trust, Ltd.* v. *Furness* (1895).

Estimating amount of freight.

If the weight or measurement of cargo as determined at the loading and the discharging ports respectively differs,

freight should in the absence of evidence clearly indicating error in the lower weight or measurement be calculated on the latter basis.

Illustrations.

Gibson v. *Sturge* (1885).

(a) A cargo of wheat was shipped under a B/L, in which the quantity was represented to be 2,664 quarters: "quantity and quality unknown." 2,785 quarters were delivered, and by way of inference, and not as the result of any evidence, the Court assumed that the increase was due to the absorption of water. *Held*, that freight was payable only on the weight shipped.

Buckle v. *Knoop.*

(b) When the freight was made payable under a C/P, at the rate of "75s. per ton of 50 cubic feet of cotton delivered," and on measurement after the discharge at Liverpool (no doubt through expansion of the bales) the measurement made in Bombay was greatly exceeded, it was *held* that freight was payable on the Bombay measurement.

Weighing and measuring of cargo.

Where freight is made payable on the "intake" measure of quantity delivered, "the plain meaning of the words in the C/P is that freight is to be paid on the intake, that is to say the shipment, measure or dimensions of the actual quantity delivered; the measure, that is to say, which the surveyors put upon the timber when it is measured for the purposes of the specification before shipment alongside the ship. I see no reason for attributing to the words 'intake measure,' the less obvious meaning 'intake method of measurement.'" (Per Bowen, J., in *Spaight* v. *Farnworth.*)

The question as to liability for weighing charges at the port of discharge is frequently arising, and this fact suggests the desirability of expressly determining the point in the C/P. Where freight is payable "on quantity delivered," the shipowner must, generally speaking, pay the cost of the weighing or measuring as the case may be. "In the absence of any custom or agreement to govern the matter, the person who wants to ascertain the quantity must incur the trouble and expense of weighing."

It does not, however, necessarily follow that the ship will obtain payment of freight on the full and true measurement:—

Illustration.

The Peri (1898).

By C/P freight was payable at 35s. per load of 50 cubic feet delivered Cargo to consist of 9-in. by 3-in. planks of reasonable lengths, such as can go down ship's present hatchways. Bill of Lading were signed for "21,357 planks said to be 3-in. by 9-in. Jarrah deals," and said to contain 808 loads. The deals

were in fact cut somewhat in excess of 9-in. by 3-in., and on ship's arrival about 5 per cent. of the planks were measured to a $\frac{1}{16}$, and it was found that the average excess was $\frac{1}{16}$. Freight was claimed on the basis of these measurements. Receivers pleaded a trade custom to the effect that fractions of an inch less than $\frac{1}{4}$-in. in thickness and breadth were disregarded, and Bigham J., *held* that the customary method of measurement must prevail. [The consequence to the ship was that she carried about 70 loads freight free.]

Liability to pay freight.

Where there is no formal contract of carriage, the shipper of goods is the person who is primarily liable to pay freight on the same: and this liability is only shifted by the clearly expressed intention of the parties.

The fact that a person receives goods under a B/L is evidence of an implied undertaking to pay freight on such goods; but no obligation necessarily arises in point of law under such circumstances.

A charterer does not, save by express stipulation, get rid of his liability to pay freight under the C/P from the fact that B/L holders are under liability to pay the like or a larger amount of freight before receiving their goods. The shipowner is, in the absence of a cesser of liability clause, not even obliged to try to enforce payment by the B/L holders before having recourse to the charterer.

Liability to load or discharge absolute: save for exceptions.

The obligation on the charterer to have the loading or discharging completed within an agreed time is an absolute and unconditional one, but in practice various exceptions are introduced into the contract in relief of the charterer, and for the purpose of freeing him from liability for detention of the ship from causes over which he has no control, *e.g.*, frosts, floods, riots, strikes of workmen, accidents to machinery, and quarantine.

Illustrations.

(a) By C/P fourteen days were allowed for the discharge and ten days on demurrage over and above the laydays. The usual course adopted at the port of discharge was to put the timber overside, for the ship to make it into rafts, and for the consignees to tow the rafts away by means of tugs. By reason of bad weather the rafts could not be formed, and the tugs could not in any case have taken the rafts away. By reason of this, great delay was caused, and on action brought by the shipowner for demurrage, it was *held* that he was entitled to recover in the absence of any exception expressly relieving the consignee.

Thiis v. *Byers* (1876).

Budgett v. *Binnington* (1890).

(b) A B/L for cargo per s.s. *Fairfield* contained the clause, "all conditions as per C/P," and by the C/P the number of lay-days for discharging was fixed. Neither C/P nor B/L contained an exception of "strikes." During the lay-days a strike occurred amongst the stevedores' men, who performed—by the custom of the port—the first part of the operation of discharge. For loss occasioned by the strike, the shipowners claimed damages, and exercised a lien on the cargo, *held*, that as the number of lay-days was fixed, the consignees were liable to pay demurrage, even though the shipowners might be unable, if called upon, to do their part in the unloading by putting cargo overside.

The strikes and labour disputes of the last ten years have given rise to much litigation. Exceptions having relation to the charterer's or consignee's liability for demurrage are now set out in most contracts of carriage with extreme nicety and comprehensiveness, but, however carefully worded the exception clauses may be, their construction involves at times no little difficulty.

Illustration.

The Saxon (1899).

The Ferndale Colliery Company sold 25,000 tons of coal to a company, delivery to be by monthly instalments. The company chartered the *Saxon* to take delivery of an instalment of this coal, and by the C/P it was provided that the ship should proceed to a dock and load in 12 clear working days (Sundays and holidays excepted) subject to the conditions of the colliery guarantee; demurrage at loading port as per colliery guarantee. By the colliery guarantee demurrage was payable *per colliery working day*, and the following exceptions were set out: *All holidays or any time lost through . . . strikes . . . or from any dispute between masters and men causing a stoppage of one colliery . . . or of the trimmers, dock, railway or other hands connected with the working, delivery . . . of the coal.*

Lay-days commenced 16th March, and expired 31st March. On 9th April the Welsh coal strike commenced in earnest, and no cargo had then been loaded. On 24th May the colliery company gave notice of inability to load, and on 17th June the shipowner was able to arrange another charter at a lower freight. He then sued for demurrage and general damages. *Held* that the shipowner was entitled to keep his ship at the loading port as he did on demurrage, and further that the exceptions did not avail to protect the charterers, the strike having come into being after the lay-days had expired.

"Reasonable" time for discharge.

If there is no fixed rate or fixed number of lay days, the merchant is only bound to discharge within a reasonable time; and the question then arises whether that reasonable time is to be calculated on the assumption that the discharge is carried on under ordinary circumstances, or under the actual emergent circumstances, however extraordinary, of any particular case. This point arose, and was the subject of express decision, in the case of *Hick* v. *Rodocanachi*, determined in the House of Lords in 1892. The case is one of such importance to

shipowners that particulars are given below in some detail :—

By C/P the ss. *Derwentdale* was to load a cargo of wheat in the Azoff for London : freight to be paid on unloading and right delivery. Twelve running days were allowed for loading and unloading, but not more than six for unloading, and ten days on demurrage. The Bs/L were the "General Produce, &c. Bs/L, 1885," and *contained no reference to the C/P*, and no express limit of time within which cargo was to be unloaded. The *Derwentdale* arrived at Millwall on the 14th of August, 1889. On the 16th the consignees sent barges to receive the cargo, and on that and the two following days the unloading was duly proceeded with. On the 20th the dock labourers struck; on the 23rd the lightermen; and on the 26th the strike became general, lasting until the 16th of September. During the whole time the ship's crew were able and willing to do such part of the unloading as had to be performed by the shipowner, and he was in no default. The consignees did all they could under the circumstances.

Hick v. *Rodocanachi* (1891).

An action for demurrage was brought against both charterers and consignees, and judgment was given for the plaintiff as against the consignees, but for Rodocanachi & Co., the shippers, on the ground that the cessor clause relieved them of responsibility. On appeal, the Court of Appeal reversed the judgment of the Court below, so far as it made the consignees liable, and this reversal was sustained by the House of Lords.

Lindley, L.J., in the Court of Appeal, concluded his judgment as follows :—

> "In this state of the authorities it appears to me most in accordance with principle to act upon the maxim *lex non cogit ad impossibilia*. We have to deal with implied obligations, and I am not aware of any case in which an obligation to pay damages is ever cast by implication upon a person to do that which is rendered impossible by causes beyond his control. Where no time for unloading is fixed by contract, the merchant's obligation is, in my opinion, to use all reasonable diligence under the circumstances which exist at the time of unloading, unless, indeed, as in *Hill* v. *Idle*, and other cases like it, those circumstances are attributable to his own conduct. Unless he has caused delay, or unless it has been caused by his agents or servants, he is in no default, and the loss to the shipowner must be borne by him, not because he is in fault, but because he is unable to show any default on the part of the cargo owner, rendering him liable for the delay from which the shipowner has suffered. It sounds reasonable to say that he who has to find labour must take the risk of the labour market; but this proposition does not solve the difficulty; it leaves out of sight the time within which the labour has to be found. The conclusion at which I have arrived is in harmony with the ordinary course of business, for there are two well-known forms of contract, one with and the other without a specified number of days for unloading. If the first form is used, the risk of a strike falls on the merchant; if the second form is used, it does not, and the risk falls on the shipowner, not because he has agreed to bear it, but because he is unable to throw it on the merchant."

How far exceptions apply.

The question sometimes arises whether exceptions having reference to the loading and discharging of cargo apply to matters not directly but only remotely connected therewith. Generally speaking, those exceptions only apply to the actual operations of loading and unloading, but there *may*

be cases in which they apply to operations widely removed therefrom, *e.g.*, the bringing of cargo to the place of loading and the taking it from the place of discharge.

Illustrations.

Allerton Co. v. *Falk* (1888).

(a) By C/P it was agreed that the merchant should not be liable for delay in loading caused by neaps and stoppage of navigation. The lay days were exceeded in consequence of the lighters which were bringing the cargo of salt down the rivers Weaver and Mersey to the place of loading being delayed by exceptionally low neaps. The merchant proved that it is the invariable practice to bring salt for exportation down by water, and that it is never kept stored at Birkenhead awaiting arrival of ships. *Held*, that the shipowner could not under the circumstances recover demurrage, the conveyance by lighters being really a part of the act of loading.

The Alne Holme (1893).

(b) By C/P of the ss. *Alne Holme* a cargo of timber was to be carried from Tornea to Sharpness, the cargo to be taken from alongside the vessel as customary at port of discharge and to be discharged with the customary steamer dispatch of the port: time lost by reason of strikes, lock-outs, &c., not to count as part of the discharging time. The usual custom of the wood trade to each port to be observed by each party." The customary mode of discharging timber at Sharpness is into lighters, by means of which it is taken up a canal to Gloucester. On arrival of the ship no lighters were available *by reason of a strike at Gloucester* amongst the laborers in the timber trade. The ship was detained 5½ days beyond the customary time. On action for demurrage against the charterers, *held* that Sharpness being within the port of Gloucester, and the defendants having done all they reasonably could do under the circumstances save as to one day, the shipowners were only entitled to recover for one day. The contention that a strike at Gloucester could not come within the exception of "strikes" in the C/P was overruled.

The following cases illustrate the difficulties which arise in the determination of a shipowner's right of recovery of damages where "days" are not provided for in the C/P:—

Postlethwaite v. *Freeland* (1880)

(a) By C/P a ship was to load and then proceed to the port of East London "the cargo to be discharged with all dispatch, according to the custom of the port." The facilities for discharge, consisting of a warp and a small stock of lighters were entirely in the hands of a company having governmental authority, and with power to exercise their authority arbitrarily in favour of mail steamers. On the ship's arrival at the port a large number of vessels were found already arrived, and the ship could not get a turn until more than thirty-one working days had elapsed. *Held*, that the shipowner could not recover damages for such delay, the facilities of the port, such as they were, having been employed in the customary manner.

Kearon v. *Pearson* (1862).

(b) Where by C/P a ship was to be loaded with "usual despatch" at the Nelson Dock, Liverpool, to which dock coals were brought from the colliery in flats, and in consequence of a sudden frost the loading of the ship was delayed for thirty-four days,—"usual dispatch" for such a ship being about five-and-a half days—it was *held*, on appeal from a judgment in favour of the shipowner in an action brought by him for demurrage, that the judge rightly told the jury that "usual dispatch" meant "usual dispatch of persons who have a cargo in readiness for the purpose of loading," and that the circumstance of the frost was no defence to the action.

Ford v. *Cotesworth* (1870).

(c) Where a C/P for the ship *Craigie Lee* (Liverpool to Callao) was silent as to the time to be occupied in the discharge, but the delivery was to be "in the usual and customary manner," and in the course of unloading the ship at Callao, the authorities refused for several days to allow any more cargo to be landed owing to a threatened bombardment of the port, it was *held* that the

contract implied by law was that each party should use due diligence in performing his part of the contract relating to the delivery, and that in the absence of any stipulation in the C/P by which the delivery depended entirely on the merchant, the loss from the delay must fall on the shipowner.

(d) The sailing ship *Snowdon* was chartered to load a full and complete cargo of coals as ordered by charterers at Newcastle, N.S.W., in the usual and customary manner. On the 25th May, 1900, the charterers notified the shipowners that the coal to be loaded was to be Wallsend coal, then in great demand. The *Snowdon* arrived at Newcastle on the 1st September, and did not obtain a loading berth until the 15th September. Kennedy, J. *held* that the contract was to load the *Snowdon* in her regular turn at the Wallsend Colliery, and that this was in fact done: that the charterers had done nothing unreasonable either in selecting Wallsend coal or refusing to substitute another coal when, having sold a cargo of Wallsend coal, they were unable to induce their purchasers to take a cargo from any other of the Newcastle Collieries. "When the cargo is to come from a definite source known to both parties and no time is fixed for loading, there is no absolute obligation on the charterer to have a cargo ready immediately on the ship's arrival at the port of loading." *The Snowdon* (1903).

(e) The sailing ship *Quilpue* was chartered to load a cargo of Brown's Duckenfield Colliery coal at Newcastle, N.S.W., in the usual and customary manner and in regular turn. The charterers were the owners of the colliery in question. The *Quilpue* arrived at Newcastle on the 3rd August, 1902, was berthed for loading on the 6th October, and her loading was completed on the 9th October. The shipowner allowed 30 days as a reasonable time for loading and claimed damages for the 37 days further detention. By the practice of the port a loading in turn was in turn of their arrival *inter se*, subject to their being on what might be called "colliery turn" with the colliery from which ships are chartered to receive their coal. On the day the *Quilpue* arrived there were 24 ships waiting to load from Brown's Duckenfield colliery. Of the ships booked to other collieries, 27 that arrived after the *Quilpue* were loaded before her, while 11 that arrived before her were loaded after her. *Held*, in Court of Appeal, that the shipowners were not entitled to damages. Vaughan Williams, L.J., cited with approval the dictum of Rigby L.J., in the case of *Carlton, S.S. Co. v. Castle Mail Packets Co.*: "I do not think that a delay which arose from a contingency, the probability of which must have been perfectly well-known to and contemplated by the shipowners when they entered into the Charter Party can be considered unreasonable." And this judge further said, "I think it is clear that, when the shipowners entered into the C/P to load in regular turn *i.e.*, the regular colliery turn, they must have known that the charterers would have prior engagements which would delay the colliery turn of this particular ship, and they must have also known that a delay of the ship for loading for a number of days (certainly between 40 and 50 days) was not an impossible or even an unusual thing under the conditions of this port." *The Quilpue* (1903).

Reporting day.

The question whether the reporting day counts as a lay-day cannot be answered definitely. Usage and custom will often govern the determination of the point; but apart from such, it appears that if work is actually proceeded with on the reporting day it should count as a lay-day.

Where by C/P a ship was to "deliver according to the custom of the port," it was held that this did not refer simply to the manner of delivery, but also included a custom whereby lay-days did not begin to run until the ship was berthed under the superintendence of the harbour-master.

The question for determination in actions brought for recovery of demurrage or damage for detention is very frequently the point of time from which under the specific contract in issue the loading or discharging time begins to run.

Illustrations.

The Crosshill (1899).

(a) By C/P the steamer was to load a cargo of coals at Grimsby, the loading time to be "36 running hours on terms of usual colliery guarantee." Exceptions included "Hands striking work . . . or other acts or causes beyond freighters' control which may prevent or delay the loading." The ship was in the dock and ready to load on the 19th July, but failed to get under a tip until the 29th owing to a block of shipping, the result of the great Welsh strike. After the 29th the loading proceeded without delay. *Held* that by the provisions of the "usual colliery guarantee" in use at Grimsby, the loading time did not begin to run until the ship was actually under a tip, but that so far as the exceptions in the C/P were concerned they did not protect the charterers.

The Skodsborg (1899).

(b) By C/P it was provided that the ss. should proceed to a "customary crane berth" as ordered at Goole, and there load a cargo of coals. By a clause inserted in writing, time for loading was to begin when the ss. was in all respects ready to load and written notice given to charterers. A printed clause setting forth that time should not count until the ss. was in berth as ordered was *struck out*. *Held* that time did not begin to run until the ss. was actually in the berth to which she was ordered by charterers, and that the clause struck out could not be referred to in order to determine the intention of the parties.

The Carlton (1898).

(c) By C/P it was provided that vessel should load "always afloat as and where ordered by charterers," but no number of lay days were fixed. SS. proceeded to Maryport and was ordered to a berth where, owing to the tides, she could not lie always afloat, and in consequence 15 days were occupied in loading. The owners claimed demurrage, but it was *held* in the House of Lords that the charterers had loaded within a reasonable time under the circumstances, and that they were not obliged to provide a berth directly the vessel arrived in port.

The Ethelreda (1902).

(d) The ss. *Ethelreda* loaded a cargo of ore at Carthagena for Maryport, under charter, which stipulated that she should proceed to the Senhouse Dock, Maryport, and there deliver the same as customary where and as directed by consignees, time for discharging to count from 6 a.m. after ship was in every respect ready in berth and free pratique as per custom of the port. Charterers had before entering into this charter made a contract with Cammell & Co., of Maryport, for the sale of about 60,000 tons of ore, to be delivered in quantities of 10,000/12,000 tons per month, free on trucks, at Maryport or Workington, the discharge of cargoes to be at not less than 400 tons per weather working day from the time of properly berthing. On the arrival in Senhouse Dock, four vessels, of which the defendants were charterers, were already on turn, with the result that the *Ethelreda* did not get a berth until 20 days after arrival. But for the fact of the four ships being on turn before the *Ethelreda* she would have been berthed about eight days sooner. On action brought by the owners to recover demurrage, the defendants were *held* not liable, it being found as a fact that they did not improperly prevent the discharge or delay her in getting what she was entitled to, viz., her turn with the other vessels in the dock.

The Mauranger (1908).

(e) By C/P the *Mauranger* was to be loaded with a cargo of coals at Grimsby within 84 running hours, time to count when written notice of readiness to receive the cargo was given. One of the clauses of the C/P provided as follows: "The parties hereto mutually exempt each other from all liability arising from frosts, floods, strikes, lock-outs of workmen, disputes between masters and men, and any other unavoidable accident or hindrances of what kind soever beyond their control, preventing or delaying the working, loading or shipping of the said cargo occurring on or after the date of this charter until the actual completion of the loading." Grimsby Dock was under the control of a railway company, and by the rules of the dock ships had to take their turn at the loading berths. The *Mauranger* arrived in the dock at Grimsby on July

18th, 1907, and written notice of readiness to load was then given, and her lay-days would then have begun, subject to any exception in the C/P, and would have expired at 9 p.m. on July 23rd. Owing, however, to the large number of ships which were waiting to load in turn before the *Mauranger* she did not get to a berth under a tip until July 27th, when she loaded her cargo within 84 hours. In an action by the owner of the *Mauranger* for demurrage, *held* that the words "any other unavoidable accidents or hindrances of what kind soever" were not to be read *ejusdem generis* with the preceding specified hindrances. but were general in their meaning; that by reason of the number of ships in the dock prior in turn to the *Mauranger* there was a hindrance preventing or delaying the loading within the exception in the C/P, and that therefore the charterers were not liable for demurrage.

Lay-days may run from readiness to lighten.

There may be a usage at the agreed port of discharge for vessels to reduce their draft by the discharge of part of their cargo before reaching their final destination. In cases of this kind, lay-days ordinarily begin to run from the time when the ship is ready to discharge at the usual place for lightening; and the lying time will, apart from custom or agreement, run on continuously. It may, however, be that there is an established custom of the port that time so occupied is not to be counted.

Illustration.

Nielson v. *Wait* (1885).

A steamer was chartered to carry grain to "Gloucester, Bristol Channel, for discharge," in so many running days. Fully loaded, she could get no further than Sharpness, a place within the port of Gloucester; after discharging one-third of her cargo there, she was taken up the Ship Canal to Gloucester, and there completed her discharge. The shipowner claimed that time occupied in going up and coming down the canal must be included in the lay-days. It was proved on the trial that vessels under similar circumstances were customarily lightened at Sharpness; that time so occupied was counted in the laydays; but that the time occupied in going up and returning was not counted. *Held*, that the custom as proved was reasonable, and that the shipowner was not entitled to demurrage.

Demurrage days not divisible.

In calculating the amount of demurrage payable, days are not ordinary divisible, but a part of a day is counted as a whole one. Hence, where the discharge of a ship on demurrage was completed at 8 a.m., and by the C/P ten days were allowed "on demurrage over and above the lay-days at 25*l. per day*," the day of completion was reckoned as a full day; and where the discharge begins in the middle of a day, that day is nevertheless to be counted as a full lay-day unless the charter expressly or by implication otherwise provides.

It is sometimes stipulated that the cargo shall be discharged "as fast as the steamer can deliver." This clause does not carry with it anything like the virtue or the meaning it is generally supposed to possess, since the Courts have in a long series of cases relieved consignees from liability for detention of ships at ports of discharge where such detention has not resulted from any default on the part of the consignees, or those for whom they were responsible.

Illustrations.

Good v. *Isaacs* (1892).

(a) By C/P the s.s. *Artemis* was to proceed to Hamburg with a cargo of oranges, "to be discharged at usual fruit berth as fast as steamer can deliver as customary, and where ordered by charterers." The steamer was ready to deliver on March 6th, but the warehouses were full and the fruit berths occupied, both being under the management of Government officials who regulate the unloading of vessels. On March 11th the authorities assigned the steamer a fruit berth, and the discharge thereafter went on as fast as possible. A claim for 80*l.* (four days' demurrage) was made against the charterers, but *held* (1) that the charterer's obligation to unload did not commence until the steamer was berthed in a usual fruit berth with the assent of the authorities; (2) that the words "as customary" must be taken to refer to the discharge and delivery by the ship rather than to the taking delivery by the charterer, and to mean that the discharge and delivery must be as fast as the custom of the port and existing circumstances would allow. Judgment for the defendants.

The Jaederen (1892).

(b) By C/P for the carriage of a cargo of sugar in bags from Dunkirk to "Liverpool, Albert, Stanley or Wapping Dock, as may be ordered by the consignees, or so near thereunto as she may safely get . . . steamer to be discharged as fast as she can deliver." On March 29th the *Jaederen* arrived in the Mersey, and got orders to discharge in the Albert Dock. On arrival there the berths around the dock were all occupied; the Albert is a closed dock, in which the whole operation of discharge is carried out by the Dock Company. A quay berth was provided on April 3rd, and the discharge began on April 5th, the operation of discharge being then promptly carried out. On action brought to recover eight days' demurrage, *held* charterers not liable, they not having any control over the discharge in the dock, and having fulfilled their part of the contract.

It is generally provided in C/Ps that Sundays and holidays are excepted in computation of lay-days used, but frequently work is done on such excepted days by arrangement between the master and merchants. In the absence of express agreement, the mere fact that Sundays and holidays are used does not entitle the shipowner to rank them as lay-days. This result can only be secured by adding the words, "unless used."

Illustration.

By a Clause in a C/P it was provided as follows:—"Seven weather working days (Sundays and holidays excepted) to be allowed by owners to charterers for loading. For any time beyond the periods above provided the charterers shall pay to the owners demurrage at the rate of 40*l.* per day. . . . For each clear day saved in loading the charterers shall be paid or allowed by the owners the sum of 20*l.*" On two holidays loading was by consent carried on, no special arrangement being made. *Held* that an agreement to treat the two holidays as lay days could not be inferred from the mere fact of work having taken place on these days by consent.

Nelson v. *The Nelson Line* (1907).

Incorporation of C/P clauses.

In order that holders of Bs/L may be made liable to pay demurrage incurred at the loading $\frac{\text{and}}{\text{or}}$ discharging ports in accordance with the terms of the C/P, there must be an incorporation of, or a clear and distinct reference to those terms in the Bs/L. The Mediterranean, Black Sea, &c., Grain B/L, 1890, is an excellent example of the way in which a shipowner's interests may be protected. That B/L stipulates for payment of freight $\frac{\text{and}}{\text{or}}$ demurrage by the receivers, and provides that "all the conditions and exceptions of the C/P are incorporated herewith." The 1890 Black Sea C/P contains the following clause:—

"The freighter's liability on this charter to cease when the cargo is shipped (provided the same is worth the freight, dead freight, and demurrage on arrival at port of discharge), the owner or his agent having an absolute lien on the cargo for freight, dead freight, demurrage, lighterage at port of discharge, and average."

How advantageously this incorporation of the C/P with the B/L works was shown in an action for dead freight, short particulars of which are given below:—

On July 20th, 1894, the ss. *Demetrio S. Schilizzi* was chartered to load a full cargo of barley (not exceeding 2,785 units) at Sevastopol for U.K. at 10*s.* 7½*d.* per unit. The C/P and B/L forms above mentioned were used. Only 2,720 units were shipped, and on the discharge at Plymouth a claim was made against the receivers for dead freight on 65 units at 10*s.* 7½*d.* *Held* the shipowners entitled to recover, the C/P lien for dead freight having been effectually incorporated with the B/L.

Foscolo v. *Hosken* (1895).

In the case of *Serraino* v. *Campbell* (1890), the B/L contained the somewhat usual clause, "they paying freight for the said coals and all other conditions as per C/P." The C/P contained the stipulation, "Negligence clause as per Baltic Bill of Lading, 1885." The turning-point in the case was, whether or no the words, "all

other conditions as per C/P" incorporated the negligence clause with the B/L, and it was held that the words had not that effect, but merely related to the payment of freight and matters *ejusdem generis*.. In the case of the *Invermore* (1905) the owners were held liable for the whole value of a cargo of rice—about 18,000*l*.—as a consequence of the master's failure to see that the bills of lading incorporated the negligence clause provided for in the C/P.

Difficulty sometimes arises as to respective liabilities to pay demurrage in cases where there are several consignees. But where one of several consignees has failed to carry out his agreement to discharge within a certain time, though he may have been prevented from doing so by the default of other consignees, the first-named is liable.

Illustration.

Straker v. *Kidd* (1878).

Where each of several Bs/L for various portions of a cargo of wheat contained the clause, "Three working days to discharge the whole cargo, or 30*l*. sterling per day demurrage," and one consignee was unable to reach his portion in time to discharge it within the three days, because of delay on the part of other consignees in unloading overlying parcels, it was *held*, in an action for demurrage against the one consignee, that he was liable to pay at the rate of 30*l*. per day; and it was said that "the defendants are liable, unless they can show that some act or default of the owner, or of someone for whom he is responsible, prevented them from performing their contract."

Lien on freight apart from contract.

Until the freight is paid, a shipowner has a right, apart from express stipulation in the C/P or B/L, to retain possession of goods carried on board his ship; in other words, he has a lien on such goods for the amount of the freight. This lien, however, is confined to freight due upon the particular goods carried; and the goods, apart from express agreement, cannot be retained by the shipowner, as against consignees who are owners of the goods, for any sum (other than the freight) due to the shipowner from the shipper.

Exercise of lien.

Where a ship is hired by a charterer, under circumstances such that the shipowner gives up possession and

control of the ship, no lien on the goods carried exists in favour of the shipowner.

All goods in respect of which freight is payable may be retained by the shipowner until all has been paid; but he may of course, and does in practice, retain only enough in value to reasonably satisfy his claim. Where Bs/L have been given for several parcels to one shipper, and these Bs/L have been assigned for value to third persons, the lien cannot be exercised against any one parcel for more than a *pro rata* freight.

Lien lost where goods abandoned.

Where ship and cargo have been abandoned by the shipowner before arrival at their destination, but the cargo is afterwards carried forward by salvors or some third party, the shipowner has no lien for freight, nor is he in fact legally entitled to claim even *pro rata* freight for the part of the voyage actually performed.

Where freight has been paid in advance by bills, and the bills are still running at the time the goods are being delivered, the shipowner cannot enforce any lien upon the goods, even though the acceptor of the bills be bankrupt.

Lien for dead freight.

Where the charterer has failed to ship a "full and complete cargo," the shipowner is entitled to dead freight or damages in lieu thereof. But no lien exists for such apart from express agreement. The amount due to the shipowner for dead freight is arrived at by ascertaining the amount which might properly have been carried over and above the amount shipped, estimating the freight on the difference, and deducting the additional expenses (if any) which the shipowner would have incurred in connection therewith.

Cases arise in which, though the ship takes on board all she can ship, she loads, in fact, much less than a full cargo. All the circumstances have then to be considered in arriving at a conclusion as to the merchant's

liability for more than the freight on the quantity actually delivered :—

Illustration.

The Isis (1899).

The ss. *Isis* was chartered to load in mid-winter a full and complete cargo of "wet wood pulp" at Bangor (Maine), for Manchester. Owing to a severe frost during the loading the bales of pulp became frozen, and in that state could not be stowed as well as they would have been if in the soft state. This resulted in a short shipment of about 350 tons, on which amount the shipowner claimed dead freight. *Held* that the charterers were not liable for the dead freight, it being a matter which ought to have been contemplated by both parties that on a winter loading the bales would very probably be frozen.

Lien for demurrage on loading.

A lien for "demurrage" is sometimes specifically given in the B/L; this does not give a lien for damages for detention at the loading port, but would cover a claim for demurrage at a fixed rate under the C/P, assuming the incorporation clause in the Bs/L to be sufficiently definite. The fact is still insufficiently recognised that unless the liens given by the C/P be clearly and specifically incorporated with the Bs/L those liens do not hold good as against the holders of such Bs/L.

"All other conditions as per C/P."

With reference to the clause "and all other conditions as per C/P," the Master of the Rolls said, in *Gardner* v. *Trechmann*, that "it brings in only those clauses of the C/P which are applicable to the contract contained in the B/L; and those clauses of the C/P cannot be brought in which would alter the express stipulations in the B/L. . . The general reference to the C/P would bring in a lien for demurrage; but it does not allow a lien to be brought in as to the rate of freight payable under the C/P," if such rate be inconsistent with the B/L rate.

Knowledge of C/P by holder of B/L.

It is probably correct to say that, however well a shipper or an indorsee of a B/L may be acquainted with the terms of the C/P, this will not in itself impose any greater contractual obligations upon such shipper or indorsee than are contained in or expressly incorporated with the Bs/L for goods shipped on the vessel to which the C/P has reference.

Continuous possession to preserve lien.

In order to preserve a lien, the shipowner must retain continuous possession of the goods; he may place them in the hands of a warehouseman as his agent, but not in the hands of some third person of independent capacity. The regulations for the landing and warehousing of goods on which a shipowner claims a lien are set forth in the Merchant Shipping Act, 1894, the material sections of which are printed in the Appendix.

Expenses of enforcing lien.

A shipowner is entitled to recover from a consignee such expenses as he has reasonably incurred in consequence of any default on the part of the consignee in taking delivery in the agreed or a reasonable time. But, generally speaking, the shipowner is not entitled to recover any expenses he may incur in enforcing his lien, though he may under special circumstances recover damages for the detention of his ship where same has been properly used as a warehouse for the purpose of exercising a lien.

Chapter VIII.

Shipowner and Charterer.

(1.) The Loading of Cargo.

Before the charterer is under any obligation with regard to the loading of a vessel the shipowner must have satisfied three conditions:—

(1) The ship must have arrived at the place of loading.

(2) The ship must be ready so far as she is concerned to load.

(3) Notice of readiness must have been given.

As to (1) difficulties in former times frequently arose, but the law is now well settled on the subject as follows:—

(a) Where the charter provides that the vessel is to proceed to a named berth or proceed to a berth or wharf "as ordered" the vessel is not an arrived ship until she has arrived at that particular berth or wharf, and consequently notice of readiness cannot be given.

Illustration.

Tharsis Co., Ltd., v. *Morel Bros.* (1891).

By a charter party the vessel was to proceed to the Mersey and deliver her cargo at any safe berth as ordered on arrival in the dock at Garston. On arrival a berth was ordered, but owing to the crowded state of the dock, delay occurred which prevented the vessel being berthed for some time after arrival. On a claim by the shipowners for demurrage arising from the delay, *Held* that the obligation of the charterers to unload did not commence till the vessel was berthed.

(b) When the place of loading is stated to be a dock within a port the vessel is an arrived ship when she arrives within that dock even though she has not got alongside the quay or berth where alone loading can be effected.

Illustration.

Thorman v. *Dowgate SS. Co., Ltd.* (1909).

A ship was chartered to proceed to Alexandra Dock, Hull, as ordered by charterer and there load a cargo of coal in 120 hours on conditions of usual colliery guarantee. The guarantee provided "time to count from 6 a.m. following the receipt of notice of readiness." The ship arrived in dock and gave notice of readiness on July 23rd, but owing to the presence of other vessels which were waiting to load the turn of the ship to go under the loading tip was not reached until August 1st. *Held* that the lay hours commenced to run on arrival of ship in dock.

(c) Where the charter merely provides that the vessel is to go to a named port and there load, the ship is an arrived ship when she has

arrived at the port and so far as she is concerned ready to load though she is not then in the particular part of the port in which the particular cargo is to be loaded. Even in this case, however, the charterers are entitled to name the wharf or place where the vessel is to be loaded, but the vessel is an arrived ship even if she cannot get to that spot owing to other vessels being there before her; in other words the time for loading begins to count even though she may not be at the berth at which the loading is to take place.

Illustration.

By charter the s.s. "Leonis" was to proceed to Bahia Blanca where she arrived on the 24th February at a time when the port was crowded with vessels and she could not therefore get a berth. She anchored in the river a few ship's lengths off the pier a place where steamers lie when waiting for a berth at the pier and notice of readiness was given at the same time. There were 46 vessels on turn before the "Leonis," as the result of a strike and a military insurrection. The "Leonis" did not reach her berth until the 30th March. *Held* that the vessel was an arrived ship and that the lay days began on the 24th February. *Leonis S.S. Co. v. Rank* (1907).

This rule, however, is subject to the custom of the port. It may be the custom at some ports that a ship is not deemed an arrived ship until she has arrived at a particular place in the port.

Readiness to load.

(2) The ship herself must be ready in all respects for loading. This means that she must have all her holds available for charterers. She must be properly equipped and ready for the reception of the cargo. If, therefore, under the charter bulkheads have to be erected by the shipowner the ship is not ready until they are so erected, and if the holds are damp after a process of cleaning out so that the cargo is likely to be damaged by being put into the holds in their then condition, the ship is not ready to load. Further, if under the C/P, as is usually the case, the shipowner undertakes the obligations of loading, the gear must be properly rigged so as to be ready to perform the work of loading. It is not, however, necessary that the ship shall be ready to sail before notice of readiness to load can be given, provided she is in a condition to safely receive the cargo and will be in a condition to sail before the loading is completed—*e.g.*, she may require repairs in the engine room or elsewhere, and still be ready for loading within the charter.

Notice of readiness.

(3) Notice of readiness must be given to charterers. This notice, of course, cannot be given until the ship is in fact ready as above described. It is not sufficient to give notice that the ship will be ready at a particular time. Charterers are not bound to take any notice of this, but the ship must in fact be ready at the time the notice is given.

As soon as the lay days commence it is the duty of the charterer to have the cargo in readiness for loading. This duty is absolute, that is no difficulties which the charterer may have in obtaining the cargo will serve as a defence to him for not having the cargo ready. Even the express exceptions from liability for demurrage contained in the charter do not, unless clearly so stated, protect the charterer in respect of failure to have the cargo in readiness. The exceptions as a rule only deal with the actual loading and not with the bringing of the cargo to the ship.

"Alongside."

C/P's usually provide that the cargo is to be brought alongside the ship. This means actually alongside, so that the ship can take the cargo from her tackles, and it is not as a rule sufficient for the charterers to bring the cargo to one portion of the quay where it is necessary for the ship to employ labour to bring the cargo alongside. Here again, however, it may by the custom of the port be that "alongside" has some more extended meaning than above described.

Illustrations.

Petersen v. *Freebody* (1895).

(a) A C/P for the carriage of spars from a port in Norway to London provided that the cargo should be discharged in the Surrey Commercial Docks, the discharging to take place in eight days, the cargo to be taken from alongside at merchants' risk and expense, the ship to discharge overside in the river or dock into lighters or otherwise if required by consignees. *Held* that the C/P did not impose upon the master the obligation to get the spars outside the ship and into the lighters and for that purpose to put men on board the lighters, but that when they had brought the spars within reach of the consignees' men in the lighters it was the duty of the latter to take their part in the joint operation of delivering and receiving the goods and that consignees were liable to pay demurrage for delay caused by reason of their men in the lighters being too few to enable the discharge to be completed within the lay days.

(b) A C/P provided that the cargo which consisted of timber should "be taken from alongside at merchants' risk and expense." The vessel discharged at the Port of Grimsby. By the custom of that port timber cargoes are taken from the ship's holds by means of the ship's winches and slings by stevedores employed and paid by the shipowner, and by them carried to the far side of the quay about sixty feet from the side of the vessel and there "lumped" or roughly piled. It was practically impossible to deposit the cargo on any other part of the quay. *Held* that the shipowner was bound to carry the cargo across the quay and "lump" it at his own expense, and that such delivery constituted delivery "alongside" within the meaning of the C/P. *Stevens* v. *Wintringham* (1898).

These cases, it will be seen, deal with discharge and not loading, but the law is precisely the same in the two cases.

Charterers' stevedore.

When the cargo is alongside it is the duty of the shipowner to take it on board. It is very frequently provided in C/P's that the charterers are to be at liberty to appoint a stevedore to do the loading at a particular rate. It is to be noted that this clause does not alter the legal relations between the stevedore and the shipowner. The stevedore, although in such cases appointed by the charterer, is the shipowner's servant, and the shipowner is responsible for his negligence or default. Is is therefore the duty of the master to superintend the loading by the stevedore even when he is appointed by the charterer, and to control the stowage and loading. If the goods are damaged by reason of the negligence of the stevedore in the stowage, or if the vessel proves to be unseaworthy by reason of the method of loading, the shipowner is liable to the merchant in damages.

Fixed lay days.

As before stated, as soon as the proper notice of readiness has been given to charterers the lay days commence. Lay days are of two kinds (1) fixed as to number, and (2) indeterminable as being dependent on circumstances. Fixed lay days are those in which the actual number of days is agreed, or if not specifically agreed, expressed in such a way that their number is only a matter of calculation—thus, where it is stipulated "12 working days" or "12 weather working days" for the loading, or "vessel to be loaded at the rate of 200 tons per weather working

day," the lay days are fixed although in different ways. "Days" usually mean consecutive days, including Sundays and holidays. "Working days" mean days upon which work is usually done at the port, and the phrase does not exclude days upon which work is not being done, *e.g.*, by reason of a strike. "Weather working days" mean working days on which the weather permits of work proceeding in ordinary course. Of course it is impossible at the commencement of the loading in this last case to fix with certitude when the lay days will expire as it depends upon future weather, but as soon as the time has passed the point of time when the lay days expired can be fixed with accuracy.

The importance of the difference between fixed and indeterminate lay days consists in this—that where the lay days are fixed the charterer is liable for demurrage for any period beyond those lay days, unless the delay is from a cause within the express exceptions of the charter, and it does not matter whether it was physically impossible for the charterer to load or not if he fails to bring himself within one of these exceptions.

Customary dispatch.

Days are not fixed under the following clauses: "To be loaded as fast as steamship shall require," "with all customary dispatch," "with all despatch of the port," or "according to the custom of the port." The first clause looks at first sight a very satisfactory one for the shipowner, but legal decisions have shown that it is by no means so. It does not mean, as one would naturally think, that the ship can insist upon having the cargo as fast as she can take it on board; it means nothing more than that the charterer must perform his part of the loading within a reasonable time. What is a reasonable time is a question of fact, and depends upon the circumstances existing at the port, including the facilities for loading and any other circum-

stances which may affect the charterer without any fault on his part. Thus, if there is a strike at the port of loading so that the charterers are unable to do their part of loading the cargo, the charterers are not responsible for demurrage even though strikes are not excepted in the C/P. It is to be noted, too, that the words "as customary" refer to the method of loading and not to the time to be occupied in loading. The fact, therefore, that cargo is usually loaded at, say, 200 tons per day does not compel the charterers to load at that rate under C/P's where there are no fixed lay days if he is prevented from doing so by circumstances beyond his control. In all such cases before the shipowner can claim demurrage he must prove that the charterers could with reasonable diligence have done their part of the work of loading more quickly.

Evidence to support claim.

General evidence of slowness in loading is of little or no value. It is necessary to have particulars of dates and times when loading was delayed, together with the reasons for the delay, and entries should be made in the log accordingly, so as to place the facts on record. The master should further make independent enquiries as to the cause of the delay so as to prove whether it was caused by any fault on the part of the charterers.

As soon as the lay days have expired, or, where there are no fixed lay days, a reasonable time as defined above has expired, the vessel is on demurrage, and it is to be noted that in demurrage all days are counted, whether Sundays, holidays or other days which are by the terms of the charter excluded from the lay days. It sometimes, however, happens that in charters there is a clause that demurrage is payable "per like day." In that case demurrage is only payable for days which would be lay days had these not expired. It is therefore highly desirable in the interests of shipowners that the

word "like" should not be inserted in the demurrage clause.

Bs/L to be endorsed with claim.

In the event of any demurrage being due at the port of loading it is important when a lien is given in the charter for such demurrage to be endorsed on the Bs/L, so as to give notice to any holder of the B/L of this fact. Failing this it is often quite impossible to recover demurrage from anyone, as it is generally provided in C/P's that the charterer's responsibility shall cease on shipment of cargo even for demurrage on loading. In the event of the C/P providing that the captain is to sign *clean* Bs/L without prejudice to the C/P, the captain is, if merchants insist, bound to sign the Bs/L without inserting the demurrage claim. In that event, however, the shipowner would be entitled to recover from the charterer, notwithstanding the cessor clause; but unless expressly bound by the charter to sign clean Bs/L, the captain should always insist upon inserting his demurrage claim on the face of the Bs/L, except in certain foreign ports where this is not allowed, and the vessel runs the risk of being arrested unless clean Bs/L are signed.

(2.) The Stowage of Cargo

Master responsible for stowage.

The responsibility for the proper stowage of a ship rests upon the Master, and through him of course upon the owner, and the fact that the charterer is entitled under the charter to appoint his own stevedore does not alter this liability. The master must therefore always superintend the loading and stowage of the cargo, and if he thinks it is not being properly done, he must insist upon its being done in accordance with his views. It frequently happens that the charterers, when their own stevedore is loading, point this fact out to the captain and intimate their willingness to take responsibility for his stowage, and a

master is apt to think that with this assurance he is safe in giving way. This, however, is not the case, and in this connection the question of the seaworthiness of the vessel is of paramount importance. Seaworthiness has by no means the simple and obvious meaning which the word would imply, but has a very much more extended meaning in law, and in fact means that the vessel must be properly fit for the carriage of the cargo to meet the perils which it may be expected to meet during the voyage, and the exceptions in a C/P or B/L exempting the shipowner from responsibility for various causes and events is subject to the primary absolute obligation that the vessel shall be so fit before sailing. If, therefore, by bad stowage the vessel is so tender that she is unfit to make the voyage in safety she is technically unseaworthy and the shipowner is liable for loss or damage to the cargo, even if there were an express exception in the C/P of negligence of the master, stevedore, &c. In other words, the exception of negligence of the stevedore will only serve to protect the shipowner if the negligence is not such as to make the vessel technically unseaworthy. If she is unseaworthy he is liable notwithstanding the exception, and it is to be noted that it is not only necessary for the owner and master to take reasonable care that their vessel shall be seaworthy on sailing, but she must in fact be seaworthy. The master therefore runs very serious risk in allowing himself to be over-persuaded by the charterers to load a cargo in any particular manner or to such an extent as to render the seaworthiness of the vessel a matter of doubt. The question of seaworthiness in relation to stowage is not limited to the stability of the ship, but may have reference to the description of the cargo, *e.g.*, if goods which are liable to taint other goods are put in the same hold, with the necessary result that the other goods are damaged; this is a breach of the

Negligence of stevedore.

implied warranty of seaworthiness for which the ship will be held liable notwithstanding the exception of negligence of the master or stevedore, and if heavy goods are put on the top of light cases so that the light cases are inevitably crushed by the superincumbent weight, the vessel is similarly unseaworthy *qua* the cargo, and the shipowner is responsible.

(3.) The Discharge of Cargo.

The observations which have been made with reference to the loading of cargo apply equally to the discharge, except that (unless expressly stipulated for in the C/P) it is not necessary to give notice to the consignees of the ship's arrival.

Merchants' stevedores.

It is, of course, the ship's duty under the ordinary form of charter to lift the cargo from the hold and put it over the ship's rail for the purpose of being received by the consignee, and whether the consignee is entitled to appoint a stevedore or whether the shipowner or master is so entitled, the latter is responsible for the work being done properly. It generally happens that merchants have to employ stevedores for doing their portion of the work relating to the discharge, viz., that of receiving the cargo and taking it away from the ship's side, and for this reason it is frequently provided in charters that the charterers' stevedore is to be employed for doing the ship's part of the work at a particular rate. This is a very unsatisfactory arrangement, and if possible a different stevedore should be employed for doing the ship's part of the work. Where the same stevedore acts for both shipowner and merchant he occupies a dual capacity, and in performing the ship's portion of the work he is the ship's agent, and in performing the merchant's portion of the work he is the merchant's agent. Now the merchants are only bound to take delivery

at the rate mentioned in the C/P provided the ship can deliver at that rate, and when the same stevedore is employed for both purposes he naturally divides his men equally between the ship's work and the merchant's work, so that in the event of a claim being made for demurrage upon the merchant on the ground that his agent did not take delivery with sufficient rapidity, he has the answer that the stevedore in his capacity as ship's agent could not deliver the cargo any more rapidly, and any claim for demurrage must in such case fail. It is true that the shipowner might have a claim for damages against the stevedore for not properly performing the ship's portion of the work, but apart from the fact that possibly the stevedore might be able to juggle with his dual capacity, there is generally no express arrangement with the stevedore as to the rate of discharge, and he is not, of course, bound by the terms of the C/P. He is in fact only bound to discharge within a reasonable time, and what is a reasonable time is a question of fact depending upon the circumstances existing at the port, and the difficulties he may have in relation to the discharge. In any circumstances, when masters are at liberty to appoint their own stevedore, or even when the charterers' stevedore is to be employed, it would be well to see that such stevedore undertakes to do the work at the rate specified in the C/P.

Stevedores' obligations.

The remarks already made as to obtaining exact particulars with regard to each period of delay and the cause thereof apply with equal or even greater force in connection with the discharge, not only with a view to recovering demurrage from the consignees, but with a view if necessary of obtaining damages from the stevedore for any default in and about the performance of the ship's portion of the work of discharge.

Chapter IX.

STOWAGE OF CARGOES.

Liability for improper stowage.

Where a shipowner is by C/P or B/L relieved from liability for the negligence of his servants in the *navigation* of his ship, the exception does not cover loss or damage arising from negligent or improper stowage. Of late the negligence clause has been expanded, so as to cover not only navigation, but *management* as well, and occasionally neglect or default in relation to stowage is specifically excepted. The exceptions clause should whenever possible, include "*Loss and damage occasioned by the negligence, default, or error in judgment of the pilot, master, mariners, engineers, stevedores, or other servants of the shipowner, whether in relation to the navigation or management of the ship or otherwise.*"

It has been said that the Courts of no country save England have admitted the right of a shipowner to exempt himself by the terms of a contract of carriage from liability for bad stowage; however that may be, it is clear that no such restriction is recognised by our Courts, and the value of the concluding words in the above exceptions clause "*or otherwise*" has been demonstrated in two recent cases.

Illustrations.

Norman v. *Binnington* (1890).

(a) Cotton-seed cake belonging to the plaintiffs was loaded, together with a number of bales of cotton, not the plaintffs', under Bs/L which contained the following exceptions (amongst others):—"Negligence or default of master, mariners, or other persons in the service of the ship, whether in navigating the ship *or otherwise;* loss or damage arising from rain, storage or contact with other goods, and the ship not being liable for any consequences of the causes herein excepted, however caused or originated." The cake was damaged through the negligence of the shipowners' servants in exposing the cake to rain, and by placing wet goods in contact with the cake. *Held* (on action brought for damage so incurred) that the words "*or otherwise*" protected the shipowners in respect of the negligence of their servants above mentioned although prior to the completion of the loading, and having reference solely to the loading and stowage.

(b) A parcel of eggs was loaded on a steamer in a Russian port for carriage to London under a B/L containing an exception of the shipowners' liability for "any act, negligence, default or error in judgment of the pilot, master, mariners, or other servants of the shipowner in navigating the ship *or otherwise*." The eggs were spoiled by being stowed near hay, the loading being done by the ship. On action brought by the consignee, it was *held* that the shipowners were not liable. *Baerselman* v. *Bailey* (1895).

Lord Esher, in giving judgment, said:—"In the exceptions we do not find words of a class followed by general words. The general words, 'or otherwise,' do not indicate something resembling negligence in navigation, they indicate to my mind something beyond and different to that, so that the clause relates to negligence in navigating the ship, and in matters other than navigating it. I can see no mischief in allowing the shipowner to make this stipulation: and reading the exceptions in this B/L as widely as it is possible to read them, they still only exonerate the shipowner from the consequences of the negligence of his servants."

A lengthy practical experience, combined with much shrewd common sense, can alone enable a master to correctly gauge the probabilities inherent to any particular plan of stowage. Circumstances vary infinitely; and it is well-nigh impossible to lay down any useful and yet general rules for the stowage of particular classes of goods, whether alone, or in conjunction with other goods; no attempt to do so in this small work could possibly succeed.

There are, however, some broad principles which govern the matter of stowage and the responsibility therefor, which may be summed up as follows:—

Master responsible for stowage.

(1.) The safety of a ship, and the stowing of the cargo in a manner consistent with the safe navigation of the ship, are matters for which a master is primarily responsible, and he is bound to give careful attention to all things having relation thereto, even though by the terms of his C/P all the labour and expenses of loading and stowing are thrown upon the charterer (*a*). A master is entitled, and indeed is bound to interfere if he sees that the safety of his ship, or of any part of the cargo, is being endangered by the stevedores' method of stowage.

Master presumed to be a competent stevedore.

(2.) A master is presumed to be acquainted with all the ordinary characteristics of goods coming under the head of and ordinarily carried as lawful merchandise, and with the probable consequences of stowing such goods in particular places in the holds, or in any given position relatively to each other. Ignorance of these consequences is no excuse;

(*a*) In the recent cases of the *Jesmond* and the *Chicklade*, both being actions brought by merchants for damage to goods by alleged negligent stowage, pleas were raised on behalf of the defendants (shipowners) that by the C/P the stevedore, though paid by the ship, was to be appointed by the charterers, and that such appointment having taken place the negligence (if any) in the stowage was not attributable to the ship, but resulted from the negligence of the charterers through their servants. In neither case did the plea succeed, and it is very doubtful whether by any such clause as the above the master and his officers can be relieved from the responsibility ordinarily attaching to them to see that their ship is in fact properly stowed.

yet in special cases it has been held to relieve a ship from liability where the consequences of a particular plan of stowage were not known even to competent stevedores.

Ship *prima facie* liable for damage.

(3.) A master—and, of course, through him, his owner—is generally liable for all damage or deterioration suffered by goods in the ordinary course of a voyage; and that is so however such damage may be caused, unless it can be clearly established that the loss is covered by the exceptions. For the consequence of natural processes such as decay, change of character, &c., not caused or assisted by any neglect in the loading, stowing, or carrying, the shipowner cannot be made liable.

Master arranges order of shipment.

(4.) Where the charterer has the option of loading several kinds of goods, or the same goods packed in different ways, *e.g.*, sugar in bags and hogsheads, a master should, before loading begins, get a statement as to the goods to be shipped from the charterer, and see to it that the goods are sent alongside in the order best suited to secure proper stowage. If he ships in the order in which goods are sent without making definite inquiry, he may find himself, in the result, unable to ship a full cargo.

Damaged goods to be rejected.

(5.) Goods improperly packed or in any way damaged when presented for shipment, or reasonably suspected of being of a dangerous character, should be promptly rejected, and more especially when these defects may very possibly result in damage or prejudice to other goods stowed in the same hold or space.

Though the subject of stowage is far too wide to be adequately dealt with here, there are certain matters of such great and such general importance as to render at least a reference thereto advisable. The matters referred to are—

(1.) **Coal.** (1) Explosions and fires on coal laden ships, and the trimming of coal cargoes:

(2.) **Cotton.** (2) Fires on cotton-laden ships:

(3.) **Grain.** (3) The shifting and/or heating of cargo on grain-laden ships.

(4.) **Oil.** (4) Explosions on oil-laden ships.

(1.)—COAL CARGOES.

In the year 1875 a Royal Commission was appointed "to make inquiry with regard to the causes of the spontaneous combustion of coal on ships, and the remedies which it may be possible to adopt for preventing and guarding against the same."

The conclusions at which the Commissioners arrived were substantially as follows :—

Report of Royal Commission.

(1.) That certain descriptions of coal are intrinsically dangerous for shipment on long voyages. [The commissioners expressed their unwillingness and inability to condemn any particular description, the circumstances of shipment and the quality of coal from even the same seam or pit varying so greatly.]

(2.) That the breakage of coal in its transport from the pit to the ship's hold, the shipment of pyritic coal in a wet condition, and *especially ventilation through the body of coal cargoes*, conduce to spontaneous combustion.

(3.) That when coal is being carried on long voyages the temperature in the various portions of the cargo should be tested periodically by thermometer and registered in the log.

(4.) *That with a view to guard against explosion, free and continuous egress to the open air, independently of the hatchways, should be provided for the explosive gases by means of a system of surface ventilation which would be effective in all circumstances of weather.*

(5.) That no additional legislation with reference to the conveyance of coal by sea is required. . . . . .unless for the purpose of giving effect to proposals for the fuller specification of coal entered outward at His Majesty's Customs.

Spontaneous ignition.

Between 1875 and 1883, 57 coal-laden vessels are known to have been lost by the firing of their cargoes, whilst during the same period 328 ships similarly laden were reported as missing from unknown causes, a certain number of these losses being, no doubt, due to fire. For the year ending the 30th June, 1897, the official returns show a total of 21 known cases of spontaneous combustion in the cargoes of coal-laden ships, but in only six of these cases were the consequences serious. For the year ending 30th June, 1903, the returns show a total of only four serious cases, whilst for the year ending June, 1908, no total losses were reported under this head.

Professor Lewis' conclusions hereon.

In an exceedingly able paper read by Professor Lewis before the Institute of Naval Architects in March, 1890, and dealing with the spontaneous ignition of coal cargoes, conclusions are drawn to the effect that liability to ignition increases with or according to :—

(1.) *The increase in the tonnage of cargoes.*—In cargoes of under 500 tons, the cases reported amount to a little under ¼ per cent. for shipments

out of Europe; from 500 to 1,000 tons to over 1 per cent; from 1,000 to 1,500 tons to 3·5 per cent; from 1,500 to 2,000 to 4·5 per cent.; and in cargoes of over 2,000 to no less than 9 per cent.

(2.) *The length and nature of the voyage.*—26,631 shipments to European ports in 1873 were accountable for 10 casualties, whilst 4,485 shipments to Asia, Africa, and America produced no less than 60. This result is partly due to the length of time the cargo is in the vessel, and partly to the increase of temperature experienced in passing through the tropics.

(3.) *The kind of coal of which the cargo consists.*—It seems to be well-nigh admitted that cases of heating and ignition are more frequent in coals shipped from North-East coast ports than in shipments of South Wales coals. So much, however, depends on the relative amount of small coal present that a well-loaded cargo of any coal would be safer than a cargo of Welsh steam coal, in which a very large quantity of dust had been produced during loading. The idea that the percentage of pyrites present is any indication of the liability to spontaneous combustion must, judging from experience, be discarded. A much surer guide is to be found in the quantity of moisture present in an air-dried sample of coal.

(4.) *The size of the coal.*—Small coal appears to be more liable to ignition than large; but, on the other hand, small coal, generally speaking, contains and gives off less gas than large, the result being that explosions of coal gas less frequently occur on ships laden with small than on ships laden with large coal.

(5.) *The shipping of coals, rich in pyrites, whilst wet.*—The shipment of coals, saturated with water, whether fresh or salt, is always attended with risk. Loading in wet weather is hence an undesirable incident, and if it can be avoided in case of long-voyage ships, so much the better.

Ventilation.

(6.) *The character of the ventilation of the cargo.*—The "through" ventilation, once so strongly advocated, is held to be one of the most prolific causes of spontaneous ignition. That such ventilation may be effective, there must be a continuous flow of good cool air throughout the holds—a state of things impossible to obtain; whilst anything short of that appears only to increase the danger, by supplying just sufficient oxygen to create the maximum amount of heating.

A forcible illustration of this occurs in the case of the four colliers, *Euxine*, *Oliver Cromwell*, *Calcutta*, and *Corah*, which were loaded at Newcastle, under the same tips, at about the same time, with the same coal from the same seam. The first three were bound for Aden, and were all ventilated in the orthodox way. The *Corah* was bound for Bombay, and was not ventilated. The three ventilated ships were totally lost, whilst the *Corah* reached Bombay in perfect safety.

(7.) *The rise of temperature in steam colliers*, due to the introduction of triple expansion engines and high pressure boilers.

The precautions suggested are that:—

(1.) *The coal should be as large as possible*, and be subject to gentler handling at the time of loading. The freer from pyrites the better, and the coal should not contain, when air-dried, more than 3 per cent. of moisture.

(2.) *At least a month should elapse between the time of being brought to the surface and the time of shipment.*

(3.) *The coal compartments should be made gas-tight*, so far as the bulkheads separating them from other parts of the ship are concerned. When all coal has been taken in, it should be battened down and the hatches not again opened until the destination is reached. A 2-inch pipe inserted in the crown of each coal compartment, and led 12 feet up the nearest mast, will allow the gases to escape without unduly admitting air.

It is to be noted with regard to the surface ventilation of coal cargoes that the Board of Trade regulations are definite and stringent. Two ventilators of due proportions must be fitted to every hold or compartment in which coal is carried, and the cargo shall be so stowed and trimmed as to allow of the entry of air by one ventilator, and the exit of the more or less explosive mixture of air and gas which would otherwise accumulate in the holds, by the second ventilator.

The following practical suggestions are made by shippers in Bristol Channel ports, and are very generally adopted at the present time:—

(1.) The hatches of vessels should never be put on immediately after the shipment of steam coal, but on the other hand should be left off as long as possible after the loading is completed.

(2.) In trimming coal cargoes a space should always be left under the deck, and a downcast and upcast ventilator with moveable cowls should be fitted one forward and the other at the after end of the hold, reaching not more than 2 inches below the deck in each case.

(3.) No light should be permitted in any one of the cabins, or in any hold until a free circulation of air has been established after shipment of coal. No candles, or any other form of light should be used except n the hands of a responsible person. [A penalty of £10 is provided for in the Harbours, Docks and Piers Clauses Act in any of any breach of this rule].

Both owners and masters have from time to time suffered at the hands of Courts of Inquiry, where it has been shown that defective means of, or insufficient use of the means of, ventilation contributed to casualties, or that usual and proper precautions have not been observed.

(a) The *Clyde*, a ship of 702 tons, loaded a cargo of coals at Leith for Quebec, the coal being stowed right up to the deck from side to side at the main hatch, and the hatchway filled up. Forward and aft the coals sloped off towards the ends of the vessel. No tube or other proper means were available on board for *The Clyde* (1887).

testing the temperature of any part of the body of the cargo on the voyage. After being 26 days out from Leith smoke was seen issuing from the hatchways; an explosion followed by flames, occurred on the 29th day, and on the 30th day the ship had to be abandoned. The Court of Inquiry found that the coal contained an undue proportion of pyrites, and got wet during the shipment. They further found that, the coal being carried on a long voyage, the temperature in the various parts of the cargo should have been tested periodically by thermometer, and registered in the log; and the master having read the B.T. "official caution," and neglected to comply with it, was suspended for three months. The owner, who was present during the loading, and knew of a previous fire on the same ship, was ordered to pay 25*l.* towards the expenses of the inquiry.

The Westbury (1895).

(b) The ss. *Westbury* loaded a cargo of anthracite coal at Burryport in September, 1895, for Rouen. The coal was shot into the forehold through one hatch, and was trimmed so as to slope away both fore and aft of the hatchway, but at the hatchway the hold was filled right up to the beams from side to side. One 10-in. cowl ventilator was fitted in the fore part of the hold, but no second ventilator had been in use in that hold since 1889, the master adopting instead a plan of ventilating through one of the sections in the hatchway covering. The steamer had carried about 104 cargoes of coal with perfect safety between 1889 and 1895. An hour after sailing from Burryport, the weather at the time being excessively hot and quite calm, the master ordered the mate and two men into the hold in question to do as much trimming as would do away with a slight list in the ship. An explosion occurred within five minutes, resulting in serious injuries to all the men. The Court of Inquiry came to the conclusion that one of the men caused the explosion by striking a match; and they further found that the managing owner, although not knowing of the fact that the second ventilator had been done away with by the master years before, was in default, and ordered him to contribute 25*l.* towards the expenses of the inquiry

Explosions: how caused.

Explosions of coal-gas on board ship are in most cases the result of the improper use of naked lights in the holds, *e.g.*, just after opening the hatches on completion of a voyage, or when trimming cargo subsequently to shipment. All the bulkheads should be as nearly air-tight as possible, thus making it difficult for coal-gas to get into contact with flame in a cabin or store-room.

On inquiries instituted by the Board of Trade into the causes of explosions on coal-laden ships, an imperfect use of the means of ventilation has generally been disclosed.

Illustrations

The Explorer (1894).

(a) The ss. *Explorer* loaded a part cargo of newly-wrought coal at Birkenhead in October, 1894. The cargo gave off gas freely. On the evening of the second day of the loading, the lower main hold being full, the hatches in the 'tween decks were put on, and the shipment of bunker coals in the 'tween decks aft of the hatch was proceeded with. The only ventilation of the lower hold during the night was by one mushroom-topped ventilator. In the early morning the hatches were removed for trimming purposes, and on one of the trimmers striking a match, an explosion resulted, with a loss of five lives. The Court of Inquiry found that the ventilation was insufficient; that the hatches should have been left off during the night, and a second ventilator should have been fitted abaft the hatchway.

(b) In the case of the *Grip Fast*, a steamer of 503 tons, a mixed cargo of anthracite and semi-bituminous coal was shipped at Swansea for Erith in November, 1893. She was fitted with two bell-mouthed ventilators and two cowl ventilators in each hold; these ventilators stood about six feet above the deck, and were undoubtedly sufficient if properly used and attended to. On entering the English Channel a heavy sea was encountered, and all the ventilators were closed. Subsequently a man went into the fore peak with a naked candle, and an explosion occurred, followed by others in the forehold. The *Grip Fast* was ultimately abandoned and sunk. The master and mate were both held in default for not attending to the ventilation when the weather moderated during the latter part of the voyage, and the certificate of the master was suspended for three months.

The Grip Fast (1893).

(2.)—GRAIN CARGOES.

Difficulties which arise with regard to the carriage of grain are mainly due to the tendency of such cargoes under favoring circumstances (1) To Shift, and (2) To Heat.

In order to secure the safe carriage of grain cargoes, and more particularly with a view to avoid risk through shifting of cargo, the M.S. Act, 1894, enacts as follows:—

Sect. 452 (1). Where a grain cargo is laden on board any British ship all necessary and reasonable precautions shall be taken in order to prevent the grain cargo from shifting.

(2) If those precautions have not been taken in the case of any British ship, the master of the ship and any agent of the owner who was charged with the loading of the ship or the sending of her to sea, shall each be liable to a fine not exceeding three hundred pounds, and the owner of the ship shall also be liable to the same fine, unless he shows that he took all reasonable means to enforce the observance of this section and was not privy to the breach thereof.

Sect. 453 (a). Where a British ship laden with a grain cargo at any port in the Mediterranean or Black Sea is bound to ports outside the Straits of Gibraltar, or where a British ship is laden with a grain cargo on the coast of North America, the following precautions to prevent the grain cargo from shifting shall be adopted:—

(1) There shall not be carried between the decks, or, if the ship has more than two decks, between the main and upper decks, any grain in bulk, except such as may be necessary for feeding the cargo in the hold, and is carried in properly constructed feeders.

(2) Where grain (except such as may be carried in properly constructed feeders) is carried in bulk in any hold or compartment, and proper provision for filling up the same by feeders is not made, not less than one-fourth of the grain carried in the hold or compartment (as the case may be) shall be in bags supported on suitable platforms laid upon the grain in bulk. Provided that this regulation with respect to bags shall not apply:—

(a) To oats, or cotton seed; nor

(b) To a ship which is a sailing ship of less than four hundred tons registered tonnage, and is not engaged in the Atlantic trade; nor

(c) To a ship laden at a port in the Mediterranean or Black Sea, if the ship is divided into compartments which are formed by substantial transverse partitions and are fitted with longitudinal bulkheads or such shifting boards as hereinafter mentioned, and if the ship does not carry more than one-fourth of the grain cargo and not more than one thousand five hundred quarters in any one compartment, bin, or division, and provided that each division of the lower hold is fitted with properly constructed feeders from the between decks; nor

(d) To a ship in which the grain cargo does not exceed one-half of the whole cargo of the ship, and the rest of the cargo consists of cotton, wool, flax, barrels or sacks of flour, or other suitable cargo so stowed as to prevent the grain in any compartment, bin or division from shifting.

(3) Where grain is carried in the hold or between the decks, whether in bags or bulk, the hold or the space between the decks shall be divided by a longitudinal bulkhead or by sufficient shifting boards which extend from deck to deck or from the deck to the keelson and are properly secured, and if the grain is in bulk are fitted grain-tight with proper fillings between the beams.

(4) In loading the grain shall be properly stowed, trimmed and secured, unless the ship is loaded in accordance with regulations for the time being approved by the Board of Trade, or is constructed and loaded in accordance with any plan approved by the Board of Trade *(a)*.

Sect. 454 (1) Before a British ship laden with grain cargo at any port in the Mediterranean or Black Sea and bound to ports outside the Straits of Gibraltar, or laden with grain cargo on the coast of North America, leaves her final port of loading, or within forty-eight hours after leaving that port, the master shall deliver or cause to be delivered to the British Consular officer, or, if the port is in a British possession, to the chief officer of Customs at that port a notice stating—

(a) The draught of water and clear side as defined by this part of this Act, of the said ship after the loading of her cargo has been completed at the said final port of loading; and

(b) The following particulars in respect to the grain cargo: namely,

(i) The kind of grain and the quantity thereof, which quantity may be stated in cubic feet, or in quarters, or bushels, or in tons weight; and

(ii) The mode in which the grain cargo is stowed; and

(iii) The precautions taken against shifting.

(2) The master shall also deliver a similar notice to the proper officer of Customs in the United Kingdom, together with the report required to be made by the Customs Consolidation Act, 1876, on the arrival of the ship in the United Kingdom.

(3) Every such notice shall be sent to the Board of Trade as soon as practicable by the officer receiving the same.

(*a*) See Appendix for Rules and Regulations approved by the Board of Trade according to an Official Notice dated December, 1899.

(4) If the master fails to deliver any notice required by this section, or if in any such notice he wilfully makes a false statement or wilfully omits a material particular, he shall for each offence be liable to a fine not exceeding one hundred pounds.

(5) The Board of Trade may, by notice published in the *London Gazette*, or in such other way as the Board of Trade think expedient, exempt ships laden at any particular port or any class of those ships from this section.

Sect. 455. For securing the observance of the provisions of this part of this act with respect to grain cargo, any officer having authority in that behalf from the Board of Trade, either general or special, shall have power to inspect any grain cargo and the mode in which the same is stowed, and for that purpose shall have all the powers of a Board of Trade inspector under this Act.

For the purpose of the provisions of this part of this Act with respect to grain cargo—

Sect. 456. The expression "grain" means any corn, rice, paddy, pulse seeds, nuts, or nut kernels.

The expression "ship laden with a grain cargo" means a ship carrying a cargo of which the portion consisting of grain is more than one-third of the registered tonnage of the ship, and that third shall be computed where the grain is reckoned in measure of capacity at the rate of one hundred cubic feet for each ton of registered tonnage, and where the grain is reckoned in measures of weight, at the rate of two tons weight for each ton of registered tonnage.

A reluctance on the part of some masters to obey the somewhat arbitrary terms of the Act, misunderstanding on the part of others, and even entire ignorance of its provisions by a few, have resulted in a long line of convictions, more especially under the section forbidding the carriage of grain in bulk in the 'tween decks other than the quantity necessary for feeding purposes. Penalties ranging from £10 to £30 have been the order of the day.

Measures to prevent heating.

With regard to the heating of grain cargoes, apart from the natural tendency of damp or new grain to heat, there is a cause frequently operating to which much attention has been given, viz., damage by heat from the stokehole or the boilers.

(1.) Wood bulkhead.

It is pretty generally agreed that in order to secure the safe carriage of grain or other perishable cargo stowed in the neighbourhood of the bulkhead separating the stokehole and/or the donkey boiler from a cargo hold, such

bulkhead should be completely shielded by a stout and continuous cleading of two and a half to three inch deals with an intermediate space of not less than six inches. This space should be ventilated as thoroughly as the circumstances of the case allow.

(2.) Ventilation.

(3.) Use of non-conducting material.

Proper means—and the proper and effective use of those means—for the ventilation of both stokehole and thwartship coal bunker at the afterpart of the main hold are an absolute necessity. As an additional precaution against heating, the use of non-conducting material over the whole surface of the fore side of the stokehold bulkhead has been recommended, though in practice it has not been found necessary.

Additional Precautions

In this connection there are certain matters worthy the attention of masters: (1) The desirability of first discharging that part of the cargo stowed in the cross bunker and/or the hold next the stokehole. (2) Avoiding the use of the donkey boiler as much as possible so long as cargo is stowed in its immediate neighbourhood. (3) Periodical examination of the wooden bulkhead in order to ensure that it is tight and strong, and (4) A proper wood sheathing over the saddle back of the donkey boiler recess.

From time to time claims of more or less serious amount are made in respect of damage through heating where the only point to be urged against the ship is that in the course of stowage the stevedores have cut a number of bags to make better stowage and ship a bigger cargo. If Bs/L are signed for a cargo in bags the ship is responsible for any cutting, even though this may be done by the charterers own stevedores necessarily employed by the ship under the charter. In the River Plate and on the West Coast of North America the utmost care should be taken by masters and officers to prevent cutting. In the case of the *Ainsdale* a special jury at the Liverpool Assizes found

the shipowners liable for £1,500 damages arising out of the cutting of bags, it being found as a fact that the cutting resulted in defective ventilation and that the heating of the cargo was the direct consequence of the insufficient ventilation.

(3.)—COTTON CARGOES.

Causes of fires on cotton-laden ships.

The very serious losses suffered by shipowners and underwriters in consequence of fires on cotton-laden ships have given rise to much speculation on—(1) The probable causes of these fires, and (2) The best means for their prevention.

Amongst the many actual or suggested causes of such fires are the following :—

(1.) Use of matches, &c.

(1.) Direct and actual contact with flame, whether of *match, candle or lamp*, during the loading. Such contact is in almost every case the result of some act of negligence on the part of a stevedore. The careless dropping of matches and the explosion of lamps are both known causes of particular fires.

(2.) Random sparks.

(2.) A *spark or sparks from the funnel or the galley* of the steamer or of a passing steamer, or from the shore, finding a way into the hold in which the cotton is stowed, either through open hatches or down a ventilator. Smoking should, of course, be strictly prohibited, but the rule appears to be insufficiently observed.

(3.) Contact with oil or grease.

(3.) The *dropping of oil or grease* upon, or any contact of either with, cotton before or at the time of shipment; this contact renders cotton so much the more liable than it ordinarily is to spontaneous combustion. Oily waste and refuse from the cotton screws is not infrequently allowed to get amongst the bales.

(4.) Improper packing.

(4.) The *imperfect character of the bands* employed for packing American cotton, those in general use being unduly liable to burst, thus rendering it not improbable that a spark may be produced. When so burst, a bale is of course a much better subject for ignition than in its compact form.

(5.) Iron bands striking iron.

(5.) The striking of the iron bands of the cotton bales against iron hatch combings, or iron stanchions, or against the bands of other bales when being tumbled into the lower hold. In certain cases it has been ascertained with reasonable certainty that such has been the genesis of fires.

(6.) Deliberate wrongdoing.

(6.) *The deliberate act of interested or malicious persons.* That certain persons have an exceptional interest in the occurrence of fires on cotton-laden ships is shown by the enormous charges made as against shipowners in ports of the United States on account of discharging, custody commis-

sion, use of fire extinguishing apparatus. &c.; and that sheer malice has been at different times the motive is clear beyond all doubt (*a*).

A Committee of the Liverpool Underwriters' Association some years since reported that they "were not without hope that, directly or indirectly, they may succeed in impressing on those in whose hands the application of the remedy really lies, that there is little prospect of any permanent reduction in the number of these fires until American cotton bales are packed in a manner more nearly resembling that in use in India and Egypt; and whilst they were still of opinion that the question of packing is the one which lies at the root of the matter, they recognised that good may be done by regulations as to the manner of loading and conditions of transit." That greater care is now exercised appears beyond doubt.

Packing of cotton.

The *Marine Journal* of New York for April, 1895, refers to this matter in the following terms :—

"It is probable that this season's losses through fires in cargoes of American cotton will largely exceed 1,000,000 dols. And it must be borne in mind that by contrast with Egyptian and Indian cotton this loss is beyond all comparison, for such a thing as fire in Egyptian or Indian cotton cargoes is practically unknown. The reason ascribed by all experts for this state of affairs is that the American cotton is loosely baled and carelessly covered and handled, whereas the cotton of the other countries referred to is baled so tightly that it becomes practically as impervious to combustion as a log of wood. It has been shown that the Indian and Egyptian cotton is compressed to a density of more than 40 pounds to the cubic foot, while American cotton goes at less than 25 pounds, and hence the greater opportunity for fires in this product in the holds of vessels as long as this state of affairs continues. It is probably true that in Egypt and India there is a different class of labour, besides different machinery possibly a different climate and a variation of quality in the cotton itself, from what is the case in our cotton States and at our shipping ports. But all this is not sufficient to account for the great discrepancy in safety of handling the products of the different countries, and when it must be admitted that numbers of the fires in American cotton were undoubtedly due to incendiarism, the contrast with the Eastern cotton trade becomes even stronger. The question as to what they are going to do about it is

(*a*) On November 25th, 1894, the cotton on board the s.s.'s *Castlegarth*, *Skidby*, *Baltimore City*, *Armenia*, *Petunia*, *County Down*, *Whitefield*, *Dalegarth*, and *Stag*, then lying at Savannah, was almost simultaneously fired, the aggregate loss being about 10,000*l*. At New Orleans a cotton cargo was maliciously fired by a man who got into the ship through an open fidley hatch ; and in another case by someone gaining access to the cotton through the engine room.

consequently, we fear, not yet settled by our cotton people, nor will it be until a radical reform is instituted in the way of baling. It is nonsense to say that our cotton cannot be more closely pressed and more neatly baled than in the fashion in which it is constantly exposed about this and other ports."

Lloyd's agents on the causes of fires.

Lloyd's agents at the different cotton-loading ports of the United States were, in the early part of the year 1891, asked to express their views as to the probable causes of these fires, and as to the means for their prevention. With remarkable unanimity they refer to the serious danger involved in the use of, and even the carrying of, matches by those engaged in the work of pressing or loading cotton. "The match evil is a very serious one," says the agent at Savannah. "More fires have occurred in consequence of carrying matches than from any other single cause," is reported from Norfolk (V.). "The accidental dropping of matches is the cause of many fires," echoes the Charleston agent. The agent at Galveston, however, thinks that fires are mostly caused by smoking on board, throwing greasy waste among the bales, and their exposure on the wharves to sparks from steamers and locomotives: the last cause the most prolific one.

Suggestions for their avoidance.

Among the suggestions made by these agents are the following:—(1) That all iron stanchions, &c., with which the iron bands may come in contact should be sheathed with wood or canvas; (2) that the bagging of the bales should be of a better description, and should cover every part of the cotton; (3) that a thorough system of inspection as to all matters relating to the loading should be adopted in the interests of both shippers and shipowners, stevedores and their labourers having too great freedom of action and too little sense of responsibility; and (4) that the present system of allowing a great accumulation of cotton bales on the wharves with no protection from, or in case of fire, demands radical alteration—more especially as offering opportunity to the incendiary.

Cotton in 'thwartship bunker.

It does not appear that there is any greater liability to spontaneous combustion in any one place in any one hold than in any other, assuming, of course, that the cotton is throughout in equally good condition. The comparative frequency of fires in cotton stowed in the 'thwartship bunker forward of the stokehole is probably due to its being in a position in which it is rather more exposed than elsewhere to external influences, and to the fact that if damp the additional heat would render it more susceptible to combustion in this particular place.

On Deck.

Where bales of cotton are carried in any of the cabins or deck-houses, the exercise of the highest possible degree of care and caution is obviously demanded of master and crew and, moreover, when so carried, it is the duty of the master to see that it is by the Bs/L at the sole risk of the charterer, and if not, that it is insured on behalf of the ship.

Findings of Court on B/T inquiries.

Many inquiries have been held by the Board of Trade where fires have broken out on board cotton ships, but without any very definite or satisfactory results. In the case of the *City of Montreal* the cargo was shipped in good condition, very clean, and free from any impurity which would be likely to lead to ignition. The greatest care was taken during the loading to prevent sparks getting into the cotton, but fire was discovered, when the ship was at sea, amongst the cargo on the lower deck immediately forward of the boiler casings and above the donkey boiler. Dr. Dupré gave it as his opinion that the heat which would under ordinary circumstances be produced in this compartment would be quite insufficient to ignite the cotton. In answer to the question: "What was the cause of the fire?" the Court replied that:—

The City of Montreal.

"They were told by Dr. Dupré that it would be quite possible for a piece of cotton which had been ignited, and then blown out, to smoulder for four, five, or even more days, and then when the cotton came to be disturbed and the air admitted, either by the pulling out of the bales, or by the collapsing of a bale which had gradually smouldered, it might burst into flame. But what the

Court had to consider was, whence came the spark that caused the cotton to ignite? It had been suggested that a spark from the funnel had found its way into one of the ventilating tubes, but the evidence negatived that. Another suggestion was that the men employed in stowing the cargo might have been smoking, but in this case very great precautions had been taken to prevent the men doing this, and discovery entailed immediate dismissal. But it was not impossible that some ashes or a match might have been dropped. The next suggestion was that a spark might have been produced by the starting of one of the steel bands with which the bales of cotton are bound round. It was quite impossible for the Court to say by which of these ways this particular fire was caused. One, thing, however, was certain, that if the cotton had been packed in the efficient way in which Surat cotton was packed—with thoroughly substantial covers, rivetted steel bands and more tightly compressed than the American bales of cotton—not only would there have been less liability of any of the bands starting, and thus producing sparks, but there would have been less liability of the fire spreading, even if a lucifer match, or even, he would say, a cartridge had exploded."

In the more recent case of the *Queensmore*, the Court, again in answer to the question, "What was the cause of the fire?" replied:—

The Queensmore.

"Dr. Dupré, who is Professor of Chemistry at Westminster School, and Chemical Adviser to the Explosive Department, says, that with pure American cotton, spontaneous combustion is not only extremely unlikely, but in his opinion next to impossible,; and even if it did occur, 900 to 1,000 degrees of heat would be required to produce such a result. He also says that if the cotton were oiled, it would require to be well oiled, and even then about 212 degrees (Fahrenheit) would be required to bring about ignition. There is no proof that all or any of these conditions were present. Was it caused by matches which had been inadvertently dropped into a bale whilst being packed? This might easily occur, as phosphorus ignites at about 120 degrees (Fahrenheit); and no doubt, from the proximity of the air shaft to the funnel and boilers, this temperature would exist in that locality, but it would be a very strange coincidence if that bale out of all the 2,270 happened to be placed near the air shaft. The carpenter of this ship has told us the apertures at the bottom of the air shafts in No. 4 compartment were closed, and that no sparks could get at the cotton. I have no reason to think that he did not to the best of his belief speak the truth; but how easy it would be in stowing the bales of cotton about these stanchions, which kept the planks covering the openings in their places, to displace one of them by a knock from a bale, or otherwise, and thus destroy its efficiency. As other fires were discovered on the breaking out of the fire in the cotton in No. 4 compartment, the question has arisen whether these various fires had each a separate and independent origin. My impression is they had not, but that they all arose from the one source near the air shaft. It is impossible from the evidence to say what was the cause of this fire, but it is my opinion much greater security would be obtained if in all these cases iron doors fitting air-tight were used instead of a plank secured by a stanchion."

Particular care should be given to the closing of all hatches as soon as stevedores knock off work, and to preventing anyone from the shore having access to any part of the ship below deck without sufficient reason.

Putting out of fires.

With regard to the methods employed for extinguishing fires in cotton whilst on board ship, it is worthy of note that, in the case of the National Line steamer *Egypt*, the

inspectors who held the inquiry on behalf of the Board of Trade report as follows:—

The Egypt.

"Prompt measures were undoubtedly taken to extinguish the fire and save the vessel. It may be questioned whether it might not have been more advisable, when the fire was first discovered, to block up all the apertures leading into the steerage, and turn on the steam fire extinguishers, which, according to the evidence, had five jets leading into this part of the ship, each pipe being 1¾-in. in diameter, thus giving a total pipe area of about 12-in., with a steam pressure on the main boilers of 75 lbs. per square inch available; and although we wish to give every credit to the master and officers for their energy, and think that they acted to the best of their judgment, at the same time we are of opinion that, when the fire was discovered, the most prudent course to adopt would have been to put the ship before the wind, stop the engines, put the full pressure of steam from the main boilers on to the fire extinguishers, in order to fill the steerage with steam as quickly as possible, and to have closed up all the apertures by which any air could have got below. Had this course been adopted it is possible the fire might have been overcome in its first stage, but when the engines were stopped at about 1.35 a.m. of the 18th, the fire had gained such mastery that it could not be controlled."

(4.)—PETROLEUM CARGOES.

Petroleum Cargoes.

The dangers attending the carriage of petroleum cargoes are well illustrated by the following cases:—

Illustrations.

The Norcross (1892).

(1) The sailing ship *Norcross*, of 896 tons register, loaded a cargo consisting of 2,300 barrels of crude petroleum and 3,300 barrels of mineral naphtha, at Philadelphia in October, 1892, for Rouen. The barrels were laid on dunnage on the ceiling and stowed fore and aft on the bilge; they were apparently in good condition and well coopered. The captain had never carried crude oil or naphtha before, and received no special instructions before sailing. Whilst the vessel was being towed up the River Seine an A.B., going into the forepeak to get some coal, struck a match to get more light, and immediately there was a rush of flame, and a violent explosion, resulting in a loss of nine lives and the destruction of the vessel.

Colonel Majendie held an inquiry into the circumstances attending the explosion, and after reporting that the cause was undoubtedly the accumulation of an explosive and inflammable mixture of petroleum vapour and air being suddenly ignited, went on to say that, in his judgment, "the main blame in connection with the accident attaches to those who placed such a cargo in charge of a master who had had no previous experience of similar cargoes, and who neglected to take any steps to inform him as to its character. Had Captain Roop realized the extremely volatile character of the cargo, or known of the peculiar penetrative powers of its vapours, he would at once have recognised that it was as important to exclude lights and matches from the forepeak and all other spaces below the main deck as it was to exclude them from the cargo space itself. . . . . It is in my opinion extremely desirable that vessels intended to be employed in this class of work should be specially fitted to prevent not only leakage, but even evaporation into what may be normally regarded as non-danger spaces; in other words, that by means of coffer dams (at all times kept filled with water) fore and aft of the cargo spaces, or by other suitable arrangements, these spaces should be hermetically closed against escape, whether of oil or vapour, into any other parts of the ship."

The Heinrich (1899).

(2) The *Heinrich*, a wooden sailing vessel of 94 tons net register, loaded a cargo of 530 barrels of naphtha at Thames Haven for Newcastle early in January, 1899. Before loading, a printed Caution was handed to the mate which expressly forbade any lights to be used during the loading or on the voyage at any place on the ship where contact with the inflammable gas given off was possible. The captain, however, had his own ideas on the subject of oil

cargoes, and kept a lamp burning continuously in the cabin, with the view of burning up any vapour that might leak into the cabin through the bulkhead. The poop, both on this vessel and on the *Blengfell*, was "half sunk," and in the case of the *Heinrich* neither the bulkhead or floor was found on the inquiry to have been air or water tight. Before getting clear of the Thames an explosion took place and completely lifted the deck of the vessel, the crew escaping with nothing worse than burns. The Inspector's report attributes the explosion to faulty construction. It further states that naphtha gives off an explosive gas at a temperature as low as freezing point, and that one part of vapour mixed with any quantity of air up to 113 parts is inflammable, and one part of vapour to 21 to 35 parts of air is highly explosive. The Inspector added:—"In my opinion it is essential to the safety of all vessels carrying naphtha, and to the lives of their crews, that no matches should be struck, and that no lamps should be lighted or burnt in any cabin, forecastle or other compartment, unless effectively separated from the hold, so as to prevent the possibility of gas or vapour given off from the naphtha accumulating in the cabin, forecastle, &c. It is quite possible that with a properly ventilated hold a vessel with imperfectly separated cabin or forecastle may escape accident on a voyage, but there is always a risk that an accident may occur at any time."

(3) The *Blengfell*, an iron sailing ship of 1,117 tons net register, loaded at New York for the River Thames a cargo of 6,584 barrels of naphtha ("Prime City") and a variety known as deodorized naphtha. The whole would freely give off inflammable vapour at ordinary temperatures. The vessel arrived safely in the Downs, and while towing up past Margate a terrific explosion took place, and eight (out of 19) of those on board lost their lives, the ship taking fire immediately and speedily becoming a total loss. Inspectors appointed by the Board of Trade to report on the explosion found that owing to the faulty construction of the ship an explosive mixture of gas and air formed in the lazarette immediately below the captain's quarters, and that this inflammable mixture leaked into the cabin and was accidentally fired there, resulting in the explosion of the accumulated gas in the lazarette. Captain did not appear to have appreciated the risk he ran in having lights in the after cabin, although the managing owner in his letters had more than once urged the necessity for having the hold well ventilated and for care in the use of lights. The faulty construction before referred to consisted in the fact that in the poop aft there was a pantry with a hatchway leading to the lazarette below, the lazarette being separated from the hold by an open grating only.

The Blengfell (1899).

Dunnage.—Practically every steamer intended for the carriage of general cargoes is now fitted with continuous permanent iron or wood battens on the sides of the cargo holds. The spaces between the battens and the actual width of those battens greatly varies, yet, even when arranged in the most advantageous manner, masters must be careful to use additional vertical or other dunnage at the sides if there is danger of any part of the cargo suffering damage by contact with the ship's side.

Permanent battens not sufficient.

If goods are stowed against these fore and aft battens, and are damaged by contact with the ship's side in the spaces between the battens, even though such contact would have been harmless but for the operation of some

"peril of the sea," the shipowner will generally be held liable for such damage.

Illustrations.

The Jesmond (1891).

(a) Merchants shipped a full cargo of sugar in bags in the West Indies for Liverpool, the Bs/L containing usual exceptions, and the shipowners remaining liable for improper stowage. There was no dunnage at the sides or in the wings other than permanent wood battens about eight inches apart, and about eight inches from the inside of the skin of the ship. Excessively heavy weather was encountered on the homeward voyage, and much water got into the holds, the result being that the bags at the bottom and in the wings were considerably washed. On behalf of the merchants, it was alleged that on the discharge many bags were found to be in contact with the ship's side. The shipowners, in answer, adduced evidence to the effect that it was not usual to have vertical dunnage at the sides or in the wings, and that no damage would have occurred but for the entrance of sea water by "perils of the sea." Found (by Wills, J., without a jury) that the system of stowage was improper, and that vertical dunnage should have been used in addition to the permanent battens.

The Washington City (1895).

(b) A cargo of hay was shipped on board a steamer at Reval for London in December, 1893, under a B/L containing usual exceptions, and the negligence clause. The weather was extraordinary cold during the loading and part of the voyage. On arrival of the steamer in London, the hay at the top and sides was mildewed and saturated with sweat. The receivers of the cargo alleged defective ventilation and insufficient dunnage in that the bales of hay were in places pressed between the permanent battens and touched the ship's side, the consequence being that the free circulation of air was checked, and that the sweat did not flow freely down the side, but into the hay. A London special jury found a verdict against the shipowners for the amount of the damage.

No case dealing with a particular cargo or a particular ship on a specific voyage can determine a shipowner's general measure of responsibility or standard of duty *re* the stowage and dunnaging of other cargoes of a similar kind. The verdicts of juries in actions for damage to cargo are not always intelligible, and are frequently inconsistent; and seeing that there is in each case a more or less formidable mass of fact and detail, it is hardly possible to get much light from a consideration of verdicts found by men who are not experts in such matters. Whilst in the cases of the *Jesmond* and *Washington City*, mentioned above, shipowners were found liable for damage to sugar and hay, they have in actions for damage to grain, maize, copra, &c., been held not liable, though the absence of up and down dunnage in each case allowed free contact of the cargo with the ship's side, and undoubtedly increased the *quantum* of damage.

Illustrations.

(a) About 370 tons of copra (the sun-dried flesh of the cocoanut) were shipped in the lower fore-hold of a steamer without any dunnage at the sides apart from the permanent wood battens. Several tons of the copra got between the battens and the ship's side, and a large proportion of it was damaged by sweat. The whole exposed surface of the cargo and the ends and side of the bulk were all more or less damaged, amounting to about 7 per cent. of the whole. On action brought by the receivers to recover 227*l.* as damages occasioned by the improper stowage of the copra, a considerable body of evidence was called on each side, the one affirming and the other denying the necessity for such dunnage as would keep the copra from the ship's side. The shipowners proved by expert evidence that copra was from its nature extremely liable to heat and sweat. Verdict and judgment for the defendants. *The Culgoa* (1891).

(b) In January, 1892, a cargo of wheat was loaded at Talcahuano on the barque *Rollo* for the U.K. for orders. The system of stowage was as follows:—Dunnage wood was laid over the ceiling about 10 inches deep, and in the bilges about 14 inches deep. Permanent wood battens were fixed fore and aft throughout the holds and 'tween decks about eight inches apart. Old sails and canvas were spread over the loose dunnage fore and aft, but in the wings and right up the sides and in the 'tween decks bags were stowed two deep against the permanent battens with no intermediate canvas or up and down dunnage. There was no loose dunnage in the 'tween decks. The cargo was in the proportion of two-third bags to one-third bulk. The passage home occupied (in all) about 120 days, and on arriving at Silloth, the discharging port, it was found that there was much damage to the bags laid along the 'tween deck and against the permanent battens at the sides of the ship. A very large amount of sweat was found to have accumulated in the 'tween decks, for which there was no escape except by running through some scuppers into the lower hold. The receivers claimed 192*l.* on account of the damage to the wheat, but a special jury found for the shipowners, whose suggestion was that the damage really resulted from the moist condition of the grain when shipped, and not from insufficiency of dunnage. The Court of Appeal reluctantly refused a new trial. *Jacobs* v. *Carr* (1894).

(c) In January, 1895, a parcel of maize in cobs was shipped on board the s.s. *Saxon Briton* at Odessa for delivery at Liverpool. The cobs were stowed in bulk in the 'tween decks of No. 2 hold. Permanent wood battens were fitted fore and aft in the 'tween deck, but there was no other dunnage of any kind there. The hold was fitted with four ventilators, but during six days of heavy weather the ventilators had to be covered up. On arrival of the steamer at Liverpool, the maize was found to be damaged by heating and sweating to the extent of about 200*l.* The receivers claimed that amount, alleging improper stowage, and that the maize should not have been allowed to come in contact with the ship's sides. The action was tried before Russell, L.C.J., who nonsuited the plaintiffs (receivers) on their surveyors admitting that it was usual for steamers to load grain in bulk without dunnage at the sides of the thwartship bunker space. *Dreyfus* v. *Gibbs & Lee* (1895).

Not infrequently questions arise as to the obligation of the charterer to load or of the shipowner to give the charterer facilities to load in spaces not specifically taken into account in arriving at the register tonnage. The fore peak is perhaps the most frequent source of trouble: the late Mr. Commissioner Kerr held that if the fore peak was properly dunnaged linseed in bags might properly be stowed there, but in a High Court case it has been held that a charterer cannot be compelled to load cargo there.

Illustrations.

The Kassala (1900).

(a) The s.s. *Kassala* was chartered by Chagundas & Co., of Bombay, for a voyage from Bombay to European ports, the charterers undertaking to load a full and complete cargo at 18/- per ton upon the cargo shipped. The defendants refused to load cargo in the bridge space, the poop space and the fore and aft peaks. Consequent on the refusal an action was raised by the owners in the High Court of Bombay and much evidence was given on both sides as to what were and what were not proper cargo spaces, with the result that the charterers were held liable in damages for not loading cargo in the bridge and poop spaces, but the fore and aft peaks were held not to be usual cargo carrying spaces in the sense that the charterers were legally bound to load same with cargo. Judgment for the shipowners for £177 12s. 4d.

The Birchtor (1905).

(b) By charter dated 10th June, 1905, with C. F. Orthwein & Sons, the s.s. *Birchtor* was described as having a guaranteed capacity of 283,000 cubic feet of actual cargo space for grain according to builders' plan, and also guaranteed 5,150 units of 2,240 lbs. wheat or maize. "All spaces to be placed at charterers' disposal which would be used for cargo if loading for owners' account." At the time the steamer arrived at the loading port freights had dropped considerably below the chartered rate, and the charterers refused to load cargo in the lazarette and fore peak spaces. Owners refused to acknowledge charterers' right not to load in these spaces, with the result that the charterers threw the ship up and the steamer left the loading port without any cargo. The owners claimed 3,000*l.* damages, and on the trial of the action raised by owners judgment was given in their favour. In support of the plaintiffs' case it was proved that the builders' plan was disclosed to the charterers' agents before the charter was signed, and this plan showed the total cubic capacity to be 283,370 cubic feet, including the lazarette 3,253 cubic feet, and fore peak 5,682 cubic feet. The damages were agreed at 2,000*l.*

Chapter X.

BILLS OF LADING.

A B/L is a receipt for goods, signed by some person authorised to sign the same on behalf of the shipowner. It is not, strictly speaking, a contract for the carriage of goods, though the conditions and exceptions contained in a B/L are the best and sometimes the only evidence of the contract between a shipper and/or consignee of goods and the shipowner for the carriage of goods named therein.

B L—A receipt for goods.

"Everyone claiming as assignee under a B/L must be bound by its terms and by the contract between the shipper of the goods and the shipowner therein expressed. The primary office and purpose of a B/L, although by mercantile law and usage it is a symbol of the right of property in the goods, is to express the terms of the contract between the shipper and the shipowner." But the mere endorsement and delivery of a B/L by a shipper of goods does not necessarily pass the property in the goods. If, for instance, a B/L is transferred as security for money advanced, the indorsee does not thereby become liable to the shipowner for freight. The intention of the parties at the time of the indorsement is a most material element in considering the question whether property in the goods does or does not pass.

Per Selborne, L. C.

Purpose of the B L.

Sewell v. Burdick (1894).

"Every consignee of goods named in a B/L, and every indorsee of a B/L to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or indorsement shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the B/L has been made with himself."

Bs/L Act 1855. Sec. I.

Where the holder of a B/L under which he is entitled to the delivery of goods on certain terms as to freight and demurrage, presents that B/L and demands delivery

Indorsee claiming delivery.

of the goods, he by implication of law undertakes for the performance of those terms of the B/L on which alone the goods are deliverable.

B/L not conclusive.

It is always open to the shipowner to show that a person assuming to sign as his agent had no authority to do so in fact, and it is equally clear that no one, whether he be master or agent, has any implied authority from the shipowner to sign Bs/L for goods which were never shipped. Hence it is that statements in Bs/L as to the weight, quantity, and number of goods shipped are not *conclusive* as against the shipowner unless it has been expressly agreed to regard them as conclusive.

Illustration.

Lishman v. *Christie* (1897).

A C/P containing the clause that the Bs/L should be "conclusive evidence against the shipowners of the quantity of cargo received on board." The mate gave receipts for the timber to be shipped whilst it was still at the timber-ponds, and between that time and the shipment some of it was lost in rafting. When Bs/L in accordance with the receipts were presented to the master for signature he declined to sign, pointing out to the shipper's agents that part had been lost; he, however, did ultimately sign under pressure. The receivers claimed to deduct the difference between the value of the B/L quantity and the quantity delivered from the freight, and it was *held* that they were entitled to make the deduction. Brett, M.R., said:—"What can be the meaning of such a proviso ('B/L to be conclusive, &c.') except to get rid of the liberty of the shipowner to show that a less quantity of cargo was actually put on board, and to make the B/L operate against him as an estoppel? It is a good business proviso for the purpose of avoiding disputes as to the quantity shipped where there is no dishonesty on either side. Of course, it would not take effect against fraud; but, in the absence of fraud, it is meant to cover all *bona fide* mistakes. In this case it is not pretended that there was any want of *bona fides*, and there is no ground here for assuming that the charterers knew that the full quantity was not shipped. There was a blunder on the part of the two clerks: but a blunder is not a fraud."

But statements of weight, number, &c., though not *conclusive*, are strong evidence against the shipowner, and if the shipowner disputes their accuracy, the whole burden of proving the inaccuracy rests with the shipowner.

Illustrations.

Smith v. *Bedouin Steam Navigation Company* (1895).

(a) The s.s. *Emir* loaded a full cargo of jute at Calcutta for Dundee. For one parcel of 500 bales the master signed Bs/L in the usual way, acknowledging shipment in good order and condition. On the discharge at Dundee 12 bales were short delivered on the parcel in question, and the value of those bales was deducted from the freight. The shipowners sued in the Scotch Courts for 35*l.* 7*s.* 3*d.*, the balance of freight, and the receivers counterclaimed for the value of the 12 bales. The outturn tally was agreed at 488. The shipowners adduced a large body of reliable evidence to the effect that it was highly improbable that bales once put on board should have been removed at the

loading port; that the cargo was not disturbed on the homeward passage, and that the whole cargo put on board was stowed in the different holds. The Lord Ordinary, whilst accepting the evidence from the ship, yet *held* that the shipowners had not displaced the burden of proof upon them to satisfactorily explain the short delivery. On appeal, this judgment was reversed, but the House of Lords restored the judgment of the Lord Ordinary. Halsbury, L.C., said:—"In the present case the important point is that there is a receipt for the shipment of the goods by the person authorized to give such receipt by the owners, and unless it could be shown that there was a mistake or some fraud in the receipt, the usual result must follow. If that were not so it would be impossible to conduct business at all; and in the case of a B/L, which involves the rights of other people, it is more important to assert this doctrine than in the case almost of any other document."

(b) Under C/P dated the 4th of December, 1890, a full cargo of petroleum in cases was shipped on the s.s. *Ethelreda*, at Batoum, for Penang and Singapore. Bs/L were signed for 71,796 cases in accordance with the mate's receipts. The outturn tallies showed a total delivery of 71,406 only. The value of the difference, viz., 390 cases, was thereupon deducted from the freight by the charterers, against whom the shipowners proceeded for the balance of freight. On the trial witnesses were called from the ship to prove that all the cargo shipped was delivered; that the cargo was properly watched, and that none was improperly dealt with. Judgment was given for the charterers, and this judgment was upheld in the Court of Appeal and the House of Lords Lord Esher, M. R., in giving judgment, said:—"The shipowner could only discharge the immense burden of proof upon him by showing with certainty that it was impossible that the goods could have been improperly dealt with, *i.e.*, abstracted between the time when they were put on board the ship and the time when they were delivered.....The ship lay during the loading from day to day in the port—supposing we say in a thievish port—and take what care you will, there are some expert thieves that will beat your care.....It is impossible to say but that these things may have been abstracted by those thieves. But suppose you cannot say how it is done, it is not for the shipper, who has got such a B/L so made out, to suggest any theory, but it is for the shipowner to show not theory but fact." *Harrowing v. Katz* (1895).

The immense importance of care and accuracy in the matter of keeping tallies and giving receipts by ship's officers is signally demonstrated in the above cases. If the tally is wrong the receipt will be and as certainly the B/L signed on the strength of the receipt will be likewise tainted with error, with the not improbable result that the shipowner ultimately pays the consignee the value of an apparent shortage of goods never in fact shipped.

It sometimes happens that the charterer and the shipper are one and the same person, and that the terms of the C/P and of the Bs/L given to the shipper are inconsistent. When this state of things exists, the terms of the C/P are the terms on which the goods are carried.

Illustration.

A C/P contained the clause "Master to sign bills of lading at any rate of freight, and as customary at port of loading, without prejudice to the stipulations of the charter-party," but the exceptions did not include the negligence clause. The charterer shipped goods for which a B/L containing the negligence *Rodocanachi v. Milburn* (1886).

clause was given by the master. The goods were subsequently lost through the master's negligence in navigation. *Held*. that the master had no authority under the circumstances to insert such a clause, and that the B/L being only a receipt which could not vary the already subsisting contract by C/P, the shipowner was liable for the loss.

Shipper entitled to proper B/L duly signed.

A shipper is entitled to demand and have a B/L duly signed by the master or other agent of the shipowner as soon as his goods are shipped; the shipper may demand redelivery of his goods if he is met with a refusal to sign proper Bs/L. What is the proper form of B/L is happily determined in most trades, but when not so determined by usage or other agreement, the master should seek to bring the terms of the proposed B/L into harmony with the C/P (if any) and must be careful to ensure that the exceptions are at least as wide as those in the C/P.

Unless by the C/P the master is bound to sign Bs/L "as presented," he is entitled (and, indeed, it is his duty) to see that the Bs/L are correct in every detail, and do not vary the contract already entered into by C/P or berth note. A matter especially calling for a master's attention when signing Bs/L is the necessity for an endorsement on the face of the Bs/L (1) of any demurrage incurred at the port of loading, (2) as to any goods specified in the body of the Bs/L not in fact shipped, *e.g.*, when timber has been brought alongside for shipment and lost before actual shipment, and (3) as to any dead freight due under the C/P.

Apart from any obligation in the C/P, a shipper cannot insist on the master's signature to more than one set of Bs/L for a bulk cargo shipped without separations. If notice is given before shipment of the shipper's intention to require the master's signature to Bs/L for parcels of the bulk cargo and it is practicable to keep the parcels separate the master is probably bound to sign for the separate parcels. Any difficulty on such a point as this can be avoided by inserting in the C/P or berth note a stipulation

that "not more than —— sets of Bs/L shall be presented for signature."

Signing for goods not shipped.

The practice on the Danube, in the Baltic and elsewhere for masters to sign Bs/L for goods before actual shipment, and whilst the goods may still be at a distance from the ship, and subject to many risks, is one which is inevitably productive of trouble from time to time. It involves the shipowner in indefinite liabilities; it goes far to relieve the charterer of his ordinary liability for the safe custody of his goods until they are actually loaded; and not infrequently results in considerable loss to the shipowner in consequence of a short delivery of the B/L quantity.

Master bound by signature to Bs/L.

In the absence of any clause in C/P or B/L making the B/L quantity conclusive as against the shipowner, the shipowner cannot be made liable for any delivery short of the B/L quantity if he can prove clearly that all the goods shipped were in fact delivered. But a master is bound by statements of fact contained in a B/L, which he has signed and is responsible for mis-statements, whether made through mistake, or negligence, or fraud. By the Bills of Lading Act, 1855, any person who has actually signed a B/L is prevented from disputing its accuracy in any proceeding between a consignee or indorsee for value and himself; unless, indeed, the holder of the B/L shall have had actual notice at the time of receiving the same that the goods had not in fact been put on board, and the holder still has it in his power to refuse to take up the B/L.

Illustration.

A master signed Bs/L for a River Plate cargo of maize in bags, the number of the bags being specified. In fact, many of the bags were torn or cut during the loading, the consequence being that much loose maize was delivered at Liverpool to the receivers, but not sufficient in weight to account for a short delivery in the number of bags. All the maize put on board was undoubtedly delivered. On action brought by receivers against the master for about 110*l.*, the value of the apparent shortage of bags, the master was *held* liable for the whole amount. *Simmonds* v. *Rose* (1893).

Master as agent of charterer.

Where a ship passes into the possession or under the control of a hirer, the master may become for the time being his servant, and no longer act as the agent of the shipowner with regard to the signing of Bs/L and the carriage of goods. But generally speaking "the master of a vessel has by law authority to sign Bs/L on behalf of the owners of the vessel. A person shipping goods on board a vessel, unaware that the vessel has been chartered to another, is warranted in assuming that the master is acting by virtue of his ordinary authority, and therefore acting for his owners in signing Bs/L. It may be that, as between the owner, the master, and the charterer, the authority of the master is to sign Bs/L on behalf of the charterer only, and not of the owner. But, in our judgment, this altered state of the master's authority will not affect the liability of the owner, whose servant the master still remains, clothed with a character to which the authority to bind his owners by signing Bs/L attaches by virtue of his office. We think that until the fact that the master's authority has been put an end to is brought to the knowledge of the shipper of goods, the latter has a right to look to the owner as the principal with whom his contract has been made."

Per Cockburn, C. J., in Sandeman v. Scurr (1866).

"Shipped in good order."

Where the B/L begins in the usual form, "Shipped in good order and condition," that is tantamount to an acknowledgment on the part of the person signing such B/L that the goods, so far as a general examination of the goods or the exterior of packages enables a judgment to be formed, are in good condition. The word "apparent" is often inserted for the purpose of making the meaning perfectly clear.

A master signing or an owner authorizing the signing of a B/L for goods as being "in good order and condition" when the goods are known to be in bad order at

the time of shipment, cannot escape from liability for the damage by pleading that the goods were in fact delivered in the same order as that in which they were shipped.

When a master signs Bs/L for weight, quantity, number or measure, he should, when it is practicable, and more especially when he has any reason to doubt the accuracy of the figures in the Bs/L, qualify his acknowledgment with the words, "*weight, number, quantity and measure unknown.*" The master by that qualification says in effect to the shipper: "You represent the cargo to be so much, but I have no personal knowledge of the matter, and do not bind myself as to the accuracy of the figures."

Exceptions strictly construed.

The contract to deliver "in the like good order and condition" is in every B/L subject to certain exceptions. In construing an exception and determining its effective limits the Courts of this country, whenever there is any doubt as to the meaning, or when there is any ambiguity of expression, will construe the exceptions clause adversely to the person for whose benefit it was inserted. "If any provision in a C/P or B/L is a stipulation in favour of one party or the other, it must be so construed as not to give it any extension in favour of that party beyond what is fairly necessary upon the words of the clause in question."

Illustration.

Burton v. *English* (1883).

A cargo of wood was shipped under a C/P, "the steamship to be provided with a deck-load, if required, at full freight, but at merchant's risk." *Held*, a clause in favour of the shipowner, and that it ought not to be so construed is to exonerate the shipowner from a general average contribution to a loss occasioned by a jettison of a part of the cargo.

"Words of general exemption from liability are only intended (unless the words are clear) to relieve the shipowner from liability where there has been no misconduct or default on his part or that of his servant." (Per Bowen, L.J.: *Steinman* **v.** *Angier.*)

Illustrations.

Thrift v. *Youle* (1877). (a) Where a B/L contained the exception (*inter alia*) of "leakage" and through the leakage of certain casks of oil a quantity of palm baskets stowed below the oil were damaged, it was *Held* that "leakage" only exempted the shipowner from liability for the loss of oil by actual leakage from the casks and did not apply to damage occasioned by the oil after it had got free.

Taylor v. *Liverp'l SS. Company* (1874). (b) Where a B/L given for a case of diamonds contained the exception "thieves," and in the course of the voyage the diamonds were stolen, and on a contest as to liability for the loss the shipowner was not able to prove conclusively that the theft had not been committed by some person on board the carrying ship, it was *held* that he was liable to make good the loss occasioned by the theft.

EXCEPTED PERILS IN C/P's AND Bs/L.

Shipowners are not liable for loss or damage to goods whilst on board, arising from the "Act of God," or the "King's enemies," for these are, by the common law of England, exceptions to the liability of a common carrier; "fire" is excepted by statute in the case of sea-going ships, but apart from agreement shipowners are liable to a cargo owner for loss or damage resulting from any peril or danger other than those above specified and foreign to the goods themselves.

Illustration.

Williams v. *Pulsford* (1895). About 120 sheep were put on board a small coasting vessel at Watchet for carriage to Barry under a verbal agreement which dealt only with the rate of freight and time of shipment. The vessel left Watchet in a seaworthy condition, but when halfway across the Bristol Channel she was found to be making water fast, and ultimately sank, the sheep being drowned. The master of the vessel was of opinion that the vessel struck on and was holed by some sunken wreckage. There was no suggestion of any negligence in the navigation of the vessel. In an action against the shipowner for the value of the sheep, *held* that he was liable in the absence of any other exceptions than those implied by law in favour of a "common carrier."

Loss or damage resulting from inherent vice or natural tendency to deterioration in the goods themselves, the carrier is never liable for. The law on this subject has been stated as follows in "Story on Bailments":—

Inherent vice or natural decay. "Although the rule is thus laid down in general terms at the common law that the carrier is responsible for all losses not occasioned by the act of God or of the King's enemies—yet it is to be understood in all cases that the rule does not cover any losses not within the exceptions which arise from the ordinary wear and tear and chafing of the goods in the course of their transportation, or from their ordinary loss, deterioration in quantity or quality in the course of the voyage, or from inherent natural

infirmity or tendency to damage, or which arise from the personal neglect or wrong or misconduct of the owner or shipper thereof. Thus, *e.g.*, the carrier is not liable for any loss or damage from the ordinary decay or deterioration of oranges or other fruits in the course of the voyage from their inherent infirmity or nature, or from the ordinary diminution or evaporation of liquids, or the ordinary leakage from the casks in which the liquors are put, or from the spontaneous combustion of goods, or from their tendency to effervescence or acidity, or from their not being properly put up or packed by the owner or shipper, for the carrier's implied obligations do not extend to such cases."

It is not always easy to determine whether damage to a perishable cargo such as grain has resulted from (*a*) inherent vice, (*b*) perils of the sea, or (*c*) neglect of some usual or necessary precaution in the matter of stowage. No better case could, perhaps, be cited in this relation than one determined on appeal by Sir F. Jeune and Barnes, J.

Illustration.

The Thrunscoe (1897).

The s.s. *Thrunscoe* (3345 gross reg.) sailed from Baltimore on the 19th January, 1897, with a full cargo of grain for Avonmouth under Bs/L containing (*inter alia*) the following exceptions:—"Accidents from machinery, boilers, steam or any other accidents of the seas, rivers and steam navigation of whatever nature or kind." The grain was stowed in the customary manner and under proper supervision. Extremely heavy weather was encountered on the voyage, with the result that the ventilators were of necessity kept continuously closed for about a week. On the discharge the grain nearest the engine space was found to be hard and discoloured, the most serious damage being in No. 2 lower hold near the stokehole bulkhead. In No. 3 hold there was damage abaft the engine room, whilst in No. 2 'tween decks next a sloping bulkhead over the engine space the grain was much deteriorated. Consignees alleged insufficient protection against stokehole heating, but the judge found on action brought by receivers that in fact the s.s. was seaworthy, that the closing of the ventilators was the substantial cause of the damage, and that this was an "accident of the sea." On appeal the judgment below was confirmed, the judges holding that the exceptions were sufficiently wide to protect the shipowner.

"Act of God."

In the case of *Nugent* v. *Smith*, Lord Justice James explained the term "act of God" as being a short way of expressing the proposition that "a common carrier is not liable for any accident as to which he can show that it is due to natural causes directly and exclusively, without human intervention, and that it could not have been prevented by any amount of foresight and pains and care reasonably to be expected of him."

"Perils of the Sea."

The exception of "perils of the sea" includes all kinds of marine casualties, such as foundering and stranding and

every variety of damage at sea resulting solely from the violent and immediate action of the wind or waves. The exception does not cover any loss or damage directly referable to the act or neglect of the shipowner or his servants as its proximate cause. Generally speaking, all loss or damage suffered in the course of the voyage through the direct action of or contact with sea water which could not have been avoided by the exercise of ordinary care and skill is covered by this exception. Something fortuitous and out of the ordinary course is involved in both words "peril" or "accident."

Illustrations.

The Inchrhona (1887).

(a) Great damage was done to a cargo of wheat through contact with sea water admitted into the hold of a steamship through a hole in a lead pipe, which hole, unknown to the shipowner or his servants, and without any negligence on the part of anyone on board, had been caused on the voyage by the gnawing of a rat. *Held*, in the House of Lords on appeal by the shipowners from a judgment of the Court of Appeal in favour of the cargo owners, that the shipowners were not liable, the damage by sea water so caused coming within the exception "perils of the sea" in the Bs/L.

The Xantho (1887).

(b) Where a steamer was sunk by collision with another vessel, without any negligence on the part of those on board the steamer conducing to the collision, and the Bs/L for the cargo laden on board contained an exception of the "dangers and accidents of the seas," it was *held*, in an action brought by the cargo-owners, on appeal to the House of Lords, that the loss of cargo was covered by the exception, and that the shipowners were not liable.

Though the proximate cause of loss may be contact with sea water, and thus *prima facie* the loss be within the exception "perils of the sea," the shipowner is not by virtue of that exception exempted from liability if it be shown that such peril was brought into operation by the neglect or default of the shipowner himself or of someone for whose acts he was responsible. Where negligence is the *causa causans* of a loss, nothing short of an express exception of negligence in the contract of carriage can secure immunity to the shipowner.

"Dangers and accidents."

"Dangers and accidents of the seas, rivers, and navigation, of whatsoever nature and kind," is only an extended form of the old exception "perils of the sea," and

no loss which could have been avoided by the exercise of ordinary care and skill is covered by this exception.

"Stranding."

The exception of "stranding" does not cover a stranding occasioned by negligence. The word "stranded," as used in a policy of insurance, applies to the case of a vessel taking the ground under any extraordinary circumstances either as to time or place, and by reason of some unusual or accidental occurrence.

"Collision."

"Collision" does not cover a loss arising out of a collision caused wholly or in part by the neglect or default of any servant of the shipowner. But it does cover a loss by collision caused solely by the negligence of those in charge of another vessel or of a compulsory pilot.

"Pilferage" "Thieves," "Robbery."

The three exceptions of "pilferage," "theft" and "robbery" would appear to cover all forms of loss arising from the criminal appropriation of goods constituting part of a cargo. The precise line of demarcation between pilferage and theft on the one hand, and theft and robbery on the other, is difficult to fix: it is very much a question of degree, *e.g.*, if a stevedore's labourer working out a fruit cargo finds oranges loose in the hold and fills his pockets with them, that is pilferage; if, however, desiring to secure some silk handkerchiefs from a case he knows to contain such goods he forces open the case and abstracts some of the contents, that is theft; but if to get into the hold of the ship he has to break through a bulkhead or force open an alley way door before he can get at the cargo, it would be a case of robbery.

These exceptions only cover cases of theft, &c., on the part of persons other than those lawfully on board the ship, whether passengers, stevedores, or crew; or—to use an expression applied in the case of *Taylor* v. *Liverpool and G. W. SS. Co.*—"not belonging" to the ship. Subsequently to the decision in that case the form of the excep-

tion was varied and extended to "thieves of whatever kind, whether on board or not, or by land or sea." But even this exception has been held not to cover a case of theft by a stevedore in the employ of the shipowner.

Illustration.

Steinman v. *Angier* (*a*) (1891).

Case goods were shipped on board a steamer at Liverpool under a B/L containing (*inter alia*) the exceptions "pirates, robbers, or thieves of whatever kind, whether on board or not, or by land or sea." The goods were stolen (without any negligence on the part of the master or officers) by the breaking open of cases after shipment by some or one of the stevedore's men employed by the ship. *Held*, that the exception did not apply to thefts committed by persons in the service of the ship, and that the shipowners were responsible for non-delivery of the goods at the port of discharge.

"Leakage." "Leakage" covers a loss not contributed to in any way by negligence on the part of the shipowner or his servants in the stowage or carriage of the goods, and does not cover damage caused by the leakage to other goods which happen to be stowed in the same hold. So, also, "breakage," "rust," "heating," only refer to breakage or rust or heating of the goods themselves under circumstances which do not make out a *prima facie* of negligence on the part of any one in the service of the shipowner.

"Breakage."

"Rust."

"Heating."

Illustration.

Barrow v. *Williams* (1890).

A parcel of hides was so stowed in the hold of a steamer that the hides became rusted by contact with unprotected iron. The Bs/L for the hides contained an exception of "rust," and also an exception of negligence in the navigation of the steamer. *Held*, that neither exception availed the shipowner, and that he was liable for the damage.

"Barratry." "Barratry" includes every wilful act of violence to, or any intentionally wrong appropriation of, or dealing with the ship or goods, or any part thereof by the master or

(*a*) The ground of this decision was that the terms of the exception were general, and hence, in the absence of express words of exemption, the ordinary liability of the shipowner for the acts of persons employed by him attached. "If," said Bowen, L. J., "it was intended to relieve the shipowner from liability for thefts committed by persons in the ship's service, clear and explicit language to that effect should have been used." It is difficult to conceive, from a business point of view, how the exception could have been more clearly or explicitly framed, and the case is instructive as showing on the one hand the determination of the Courts towards a construction of the exception clauses which give as little relief and exemption as possible to shipowners, and on the other hand as evidencing the urgent necessity for clearness and definiteness in all contracts of carriage by sea.

other member of the crew of a ship. Any breach of duty by the master of a ship in relation to his owners' property with a criminal intent is barratry.

"Capture" is the forcible taking of a ship as prize in time of war, or of reprisals. "Arrest" is the temporary detention of a ship with a view to its ultimate release when the purpose of the arrest has been fulfilled. An "embargo" is laid upon a ship when a government prohibits its departure from a particular port; it is generally laid in view of impending hostilities. "Capture." "Arrest." "Embargo"

"Jettison" covers not only jettison which has become necessary through some peril of the sea, but also jettison rendered necessary by the neglect of the master or crew in the course of navigation of the ship. Where, however, cargo is carried in a manner contrary to the express terms of the Bs/L, or the ship starts on her voyage in an unseaworthy state, and that there is a subsequent jettison, the shipowner is liable for the loss thereby sustained, notwithstanding the exception of "jettison" in the Bs/L. "Jettison."

Illustration.

A number of bales of cotton were shipped on a steamer to be carried, as per Bs/L, "under deck." They were, in fact, carried on deck with the knowledge and acquiescence of the shipper, and 95 bales were justifiably jettisoned in the course of the voyage. By the Bs/L the shipowner was not liable for "jettison." *Held*, on action brought by the indorsees of the Bs/L, that they were entitled to recover the value of the jettisoned bales from the shipowners, the exception of "jettison" having exclusive reference to bales safely stowed under hatches, as per Bs/L. *Royal Exch. SS. Co. v. Dixon* (1886).

The exception of "fire" covers every case of fire on board which has not been occasioned by the negligence of any servant of the shipowner, and also the case of damage by fire to goods not actually on board the ship, but in course of shipment. The express exception of "fire" in a B/L would appear to oust the operation of the statutory exception before referred to. Where the exception is of "fire or any of the consequences thereof," a shipper is not precluded from recovering a general average contribution "Fire."

from the ship in respect of damage done to his goods by water used to put the fire out.

"Restraint of princes."

"Restraint of princes, rulers, and peoples" covers any governmental interference of a forcible character with ship or cargo, whether such interference be by an enemy of the state to which the ship belongs or not.

"Damage done by stowage or contact with other goods" does not, standing alone, cover a claim arising out of improper or negligent stowage; but where there is this exception the burden of proving negligence lies upon the person alleging it.

Illustration.

The Cotherstone (1890).

Where two parcels of phosphates of high quality were stowed in the same hold, and a third parcel of inferior quality was stowed on top, incompletely separated from the lots of better quality, whereby the latter became deteriorated, and the B/L contained the exception, *injury from stowage, or contact with, or smell, or evaporation from any other goods*," it was *held* on the evidence adduced at the trial that the shipowner was not liable.

"Quarantine."

Regulations as to quarantine may prevent the loading or discharge of a vessel, but this will not in the absence of an express exception of "quarantine" excuse a default on the part of a charterer in loading, or of a consignee in discharging cargo according to the terms of the contract.

The term "quarantine expenses" has been construed in a somewhat wide sense in favour of a shipowner.

Illustration.

The Hugh Sleigh (1893).

Under Bs/L for goods consigned to a company at Buenos Ayres the goods were to be delivered on the consignee's wharf in the Boca, or as near thereunto as the ship could safely get. The wharf was occupied on the steamer's arrival and after lying off the wharf for four days she was ordered out of the river by the sanitary authorities in consequence of fever breaking out on board. The port authorities refused to allow the steamer to go back into the river, whereby it became necessary to discharge into lighters in the outer roads. The Bs/L contained an exception in favour of the shipowner of "quarantine expenses," and on action brought by the shipowner against the consignees for 296*l*. the cost of the lighterage, Baron Pollock directed the jury that if the lighterage was the natural consequence of the quarantine relations, they should find for the shipowner. Verdict and judgment for the shipowner.

The insertion of a strike clause in the following or

substantially similar terms is advisable when labour difficulties are at all probable:—

"*Ship not to be responsible for any loss, damage, or delay directly or indirectly caused by or arising out of strikes, lock outs, labour disturbances, trade disputes, or anything done in contemplation or furtherance thereof, whether the owners be parties thereto or not.*"

The consequence of a deviation cannot be too frequently pressed upon the notice of owners and masters. Where Bs/L have been signed for a specific voyage a deviation is such a breach as to displace the contract by B/L altogether; it goes to the root of the contract: the performance of the voyage is a condition precedent to the right of the shipowner to put in suit the liability of the other party to the contract. The fact that the deviation had no relation whatever to the damage is immaterial.

Illustration.

Thorley v. Orchis SS. Co. (1907).

Goods were shipped on the *Orchis*, described in the bill of lading as "now lying in the port of Limassol and bound for London." By the bill of lading the shipowners were exempted from liability for any act, neglect or default of their stevedores in the loading, stowing or discharging of the vessel. The vessel deviated during the voyage. In the course of discharging at London the shipowners' stevedores damaged part of the cargo consisting of locust beans, by allowing the beans to become mixed with a poisonous earth called terra umber. *Held*, that the shipowners were liable for the default of their stevedores, as by deviating they had wholly lost the benefit of the exceptions clauses in the bill of lading.

In practically all ocean Bs/L, other than those covering Government stores, a full negligence clause may to-day be found. By the statute law of several countries, *e.g.*, law in the United States, Canada, the Australian Commonwealth, no B/L is legal which contains a negligence clause, but by the terms of the U.S. Harter Act (1893), the Canadian Sea Carriage of Goods Act, and the Australian Sea Carriage of Goods Act, equivalent relief is secured to the shipowner in case due diligence is employed by him to make his vessel seaworthy.

Between 1870 and 1880 an ever increasing volume of claims by merchants against shipowners for damages con-

sequent on loss or damage to cargo through negligence in the navigation and/or management of vessels compelled a strenuous insistence on the part of shipowners in favor of the insertion of the negligence clause in all contracts of carriage by sea.

In the year 1882, at a conference of shipowners and merchants held in Liverpool, a general form of B/L was almost unanimously adopted. Each clause in this model B/L was made the subject of serious consideration, and the exceptions contained therein, so far as they are now material, were as follows :—

Negligence clause 1882.

"The act of God, perils of the sea, . . . collisions, stranding, and other accidents of navigation excepted, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the shipowners."

But in 1885, at another conference held in Hamburg, and attended by no single representative of the shipping interest of this country, the so-called "Hamburg Rules of Affreightment" were drawn up and adopted by a majority, consisting for the most part of foreign jurists. The first of these rules was in the following terms :—

Hamburg clause 1885.

"The shipowner shall be responsible that his vessel is properly equipped, manned, provisioned, and fitted out, and in all respects seaworthy and capable of performing her intended voyage; and for the stowage and right delivery of goods. He shall also be responsible for the barratry, faults, and negligence, but not for errors in judgment of the master, officers and crew."

If adopted, this clause would have thrown matters back at least twenty years, there being no line of demarcation according to the law of England between negligence and error in judgment. But happily these new rules carried no more weight with them than they deserved ; and in the year 1887, at another conference held at Liverpool, at which shipowners, merchants, and underwriters were well represented, a resolution was passed unanimously re-affirming the principle of the negligence clause, as set out in the Liverpool (1882) form.

Liverpool Conference 1887.

Result of use of Negligence clause.

The claims now-a-days paid by the Protection and Indemnity Associations in respect of loss of or damage to cargo due to negligent navigation have been, as a necessary consequence of the use of the clause, reduced to quite a nominal amount. By the rules of such Associations, a member who fails to secure the insertion of a negligence clause in C/P's and/or Bs/L is now deprived of relief or indemnity in case of a claim. As soon as a member becomes aware of the fact that any C/P or B/L signed on his behalf does not contain a negligence clause, his duty is to communicate with his Association and a special insurance cover is then effected at the expense of the member.

Attempts will no doubt be made in the future as in the past to secure legislation which shall debar shipowners from contracting out of liability for the negligence of their servants (*a*). That such attempts will ever meet with even partial success is highly improbable.

London Conference Rules of Affreightment, 1893.

In October, 1892, the Association for the Reform and Codification of the Law of Nations adopted the following rules, the intention being that they should be incorporated with contracts for carriage by sea in the same way that York-Antwerp Rules—the work of the same Association—are incorporated by a simple reference to them in the contract :—

(1). The shipowner shall not be responsible for loss or damage arising from the act of God, perils of the seas, or other navigable waters, barratry

(*a*) Not long ago the London Chamber of Commerce framed a Bill, which was printed and widely circulated, the avowed object of such Bill being "to regulate and define the duties and liabilities of shipowners." The chief provisions proposed were—(1) that no shipowner shall be liable for any loss, &c., of goods to be carried, except for loss caused by the want of reasonable care ; (2) *that every shipowner shall be liable for loss, &c., caused by the want of reasonable care, the onus of proving the exercise of such care being on the shipowner ;* (3) that every shipowner shall be liable for the safe custody of goods deposited on any wharf before delivery ; and (4) *that any provision or exception in any B/L to the contrary* (of (2)) *shall be void.* Furthermore, it was proposed that no shipowner should have the right to contract himself out of any implied warranty of seaworthiness, or be exonerated from any duty to properly equip and fit out any ship ; that goods carried beyond their destination or discharged at the wrong port to be at the risk of the shipowner ; and every B/L to be conclusive evidence of the shipment of the goods therein described both as against shipowner and master.

of the master or crew, enemies, pirates, civil commotions, robbers, thieves, arrest or restraint of princes, rulers, or people, riots, strikes, or stoppage of labour, capture or seizure or arrest under civil process; nor from fire on board, in hulk or craft or on shore, collisions, strandings, explosions, break-down of machinery or tackle, or other accidents at sea, in other navigable waters, or in port, even when occasioned by negligence, default or error in judgment of the pilot, master, crew, or other servants of the shipowner; nor from heating, decay, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, or any loss or damage arising from the nature of the goods, or the insufficiency of packages, or vermin; nor for land damage; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address or description; nor for risk of hulk, craft, or transhipment.

(2). The shipowner shall be responsible for loss or damage arising from any unfit state of the vessel to receive the goods, or any unseaworthiness of the vessel when she sails on the voyage. But any latent defect in hull, machinery, equipment or fittings shall not be considered unfitness or unseaworthiness, provided the same do not result from want of due diligence of the shipowner or of the ship's husband or manager.

(3). The shipowner shall be responsible for loss or damage arising from any want of reasonable care or skill in the loading, stowage, or discharge of the goods. Shipowner's responsibility to cease on delivery from the ship's tackle.

(4). The ship to be at liberty to call at any ports in any order, to sail without pilots, and to tow and assist vessels in distress, and to deviate for the purpose of saving life or property.

(5). General average payable according to York-Antwerp rules.

It was however agreed at the conference that these rules should have effect only in those trades in which no form of bill of lading had been already settled by mutual agreement between shipowners and merchants. They are cited here solely as an evidence of a progressive tendency of opinion in the commercial world to the effect that a shipowner may fairly and properly stipulate for no liability in respect of the negligent acts of his servants.

The exact form of the "negligence clause" varies infinitely, but the following is a fair example:—

Forms of negligence clause.

"... *and whether any of the perils, causes or things above mentioned or the loss or injury arising therefrom be occasioned by the wrongful act, default, negligence, or error in judgment of the owners, pilot, master, officers, crew, stevedores, or other persons whomsoever in the service of the ship or for whose acts the shipowner would otherwise be liable.*"

But it is generally preferable to have a separate and distinct clause to the following effect:—

"*The shipowner shall not be responsible for any loss, damage, or claim caused by the act, neglect or default of the master, officers, engineers, pilots, stevedores, or other servant or employee, whether in relation to the navigation, stowage or management of the ship or otherwise.*"

The following cases are of interest as illustrating the tendency of the Courts in determining whether or not in the circumstances of the particular case the form of negligence clause in use protected the shipowner:—

(a) A steamship, whilst loading, sunk at her moorings in the river Thames through the negligence of the engineer in allowing one of the pump valves to remain open, and so fill the ship. In an action by the cargo owners, the shipowners relied upon an exception of "all accidents, loss or damage from any act, neglect, or default whatsoever of the pilot, master, officers, engineers, or crew, in navigating the ship or otherwise being excepted." *Held*, that the exception exonerated the shipowners. *The Nautilus* (1891).

(b) A cargo of jute was injured through the breaking of the discharge pipe of the forward water-closet on the port side, the breakage being due to undue pressure of the cargo at that point, or to undue force being used in the process of stowing. The Bs/L contained the negligence clause. *Held*, that the shipowners were liable. On appeal it was *held* that the failure to case the pipe before stowing was negligence on the part of the master, and for the consequences of such neglect the shipowners were exempted by the express terms of the B/L. The House of Lords however restored the judgment of the Court of first instance. *The Tilkhurst* (1891).

(c) The ss. *Carron Park* was chartered to load a cargo of sugar at New Fairwater for Greenock, the shipowners not to be responsible "for any act, neglect, or default whatsoever of their servants during the said voyage." During the loading, through a valve in the engine room being negligently left open, water got into the holds and damaged the cargo. In an action for the damage so sustained, *held* that the term "voyage" included the period of time during which the vessel was being loaded, and that the damage was covered by the exception. And it was further *held* that the shipowners right to contribution in general average from the cargo owners was not affected by the negligence of their servants for which, by the terms of the exception, they were not responsible. *The Carron Park.* (1890).

(d) A cargo of 796 tons of sugar in bags was shipped at Dunkirk for delivery in London. The Bs/L incorporated a C/P, which contained a negligence clause as follows:—"perils of the sea, barratry . . . strikes . . . collision, stranding and all other accidents excepted, even though caused by negligence, fault or error in judgment on the part of the pilot, captain, sailors or other servants of the owner in the management or navigation of the ship or otherwise." In the course of the discharge the stevedores employed by the ship handled the cargo roughly, and in particular by the reckless use of hooks tore many of the bags and burst others through the improper use of the slings and striking the hatch coamings. *Held* by the Court of Appeal, confirming Pillimore, J., the shipowners not liable. *The Torbryan* (1903).

(e) A cargo of sugar in bags was shipped at Pernambuco for New York, under Bs/L which contained the following exceptions: "Loss or damage resulting from any of the following perils, whether arising from the negligence of the pilot, master, mariners, engineers or others of the crew, or otherwise howsoever excepted, viz., collision, stranding or other peril of the seas, rivers or navigation....." When the *Tropic* was outside Sandy Hook the chief engineer, believing that the *Tropic* was going to Williamsburg wharf to discharge her cargo, proposed to fill No. 4 ballast tank with water for boiler use whilst dis- *The Tropic* (1901).

Negligence.

charging, instead of taking in water at the Williamsburg wharf, where, according to his previous experience, the water was contaminated with sewage. He therefore opened the seacock, and by mistake, instead of opening the valve of No. 4 tank he opened the deep tank, with the result that the water ran into the deep tank where sugar was stowed, damage to the extent of 1,320*l* being thereby caused. *Held*, the steamer protected from liability by the exceptions clauses.

Wade v. *Cockerline* (1905).

(f) The s.s. *Oceanic* was chartered to load a full and complete cargo of mill-sawn deals and/or battens and/or boards at Luleaborg for West Hartlepool. "Steamer to be provided with a deck load at full freight at charterers' risk, not exceeding what she can reasonably stow and carry." Exceptions included accidents of navigation or latent defects in or accidents to hull and machinery, always excepted, even when occasioned by negligence, &c., of master, mariners or other servants employed by the ship. Before the voyage commenced and while taking in cargo at Luleaborg, through want of proper care on the part of the shipowners' stevedores, who had been warned by the mate they were not loading her with sufficient care, a quantity of the cargo piled up on the bridge deck pressed so severely on uprights which were placed against the stanchions to keep the cargo in position that the stanchions gave way and a part of the cargo was lost overboard. The weather was fine, and the ship in herself was in all respects seaworthy. The question arose whether the loss was due to unseaworthiness of the ship or the negligence of persons employed by the owners. *Held* by Kennedy, J., that the shipowners were not responsible, the loss of cargo not being due to unseaworthiness, but to an "accident" occasioned by negligence. The Court of Appeal dismissed the merchants' appeal.

Negligent Stowage.

The Accomac (1890).

(g) Under C/P a cargo of rice was loaded on the ss. *Accomac* at Rangoon for London. The shipowners were not liable "for any act, negligence, or default of master or crew in the navigation of the ship in the ordinary course of the voyage." On her arrival in London the steamer went into the Victoria Dock to discharge cargo. While this was being done water got into the steamer in consequence of negligence in and about the removal of a bilge-pump, and the cargo was damaged. In an action for the damage, *held* that it was not the result of "negligence in the navigation in the ordinary course of the voyage," and that the shipowners were liable.

The Cressington (1891).

(h) A cargo of wheat was shipped on the *Cressington* at San Francisco under a C/P and B/L, both of which excepted "perils of the sea and other accidents of navigation, even when occasioned by the negligence, default, or error in judgment of the master, mariners, or other servants of the shipowners." During the voyage, in consequence of heavy weather, a rivet in the foot of a bulwark stanchion worked loose, whereby a leak was created, and the cargo became damaged by sea water. After the weather improved the master negligently omitted to take proper steps to stop the leak, and further damage resulted. In an action for damage to cargo, *held* that the shipowners were protected from liability, the inflow of sea water being a peril of the sea and an accident of navigation, whilst the negligence of the master with respect to it was covered by the exception in B/L.

The Ferro (1892).

(i) Cases of oranges were shipped at Valencia for Liverpool under a B/L, excepting (*inter alia*) "damage for any act, neglect, or default of the pilot, master, or mariners in the navigation or management of the ship." The stowage was done by stevedores who were appointed by the charterers; but the stowage was under the C/P "at the risk and expense of the steamer." On arrival at the port of discharge it was found that a number of cases were damaged by being stowed in such a way that their ends rested on the angle irons and waterways, resulting in undue pressure upon the ends when the cargo settled down. In an action for the damage so sustained, *Held* the shipowners liable since the stevedore was not included in the list of persons whose acts, &c., were excepted: and further that the words "management of the ship" did not include improper stowage.

In giving judgment, Mr. Justice Barnes said:—"I am not satisfied that the words 'management of the ship' go much, if at all, beyond the word 'navigation.' Some things may be suggested to which the word 'management' is perhaps applicable beyond that of 'navigation,' but I feel that it is not such clear and expressive language as to include within it the words 'improper stowage.' It seems to me a perversion of terms to say that the management of a ship has anything to do with the stowage of the cargo."

(j) By C/P (1890 Black Sea Form), for the carriage of a cargo of grain per s.s. *Southgate*, from Sevastopol to the United Kingdom, the shipowners were exempted from liability for damage to cargo arising from "perils, dangers, and accidents of the sea or other waters of what nature and kind soever; strandings and all other accidents of navigation, and all losses and damages caused thereby, even when occasioned by negligence, default, or error in judgment of the pilot, master, mariners, or other servants of the shipowners; but unless stranded, sunk, or burnt nothing herein contained shall exempt the shipowner from liability to pay for damage to cargo occasioned by improper opening of valves, sluices, and ports, or by causes other than those above excepted." Whilst the loading of the cargo was proceeding the circulating pump delivery valve in the side of the ship was opened and was negligently left open, whereby much water got into the ship and damaged the cargo. To prevent the ship foundering at her moorings the master had her towed into shallow water, where the ship sank. On action brought to recover 3,500*l.* damage to cargo, *held* shipowners not liable, the negligence clause being applicable to "dangers and accidents of the sea or other waters," as well as to "accidents of navigation," and that the exceptions applied, although the ship was still at her moorings. Further, that the words "unless stranded, sunk or burnt" precluded liability in the precise circumstances of the case. *The Southgate* (1893).

(k) By a bill of lading the shipowners were exempted from liability in respect of "error in judgment.....of.....master.....whether in navigating the ship or otherwise." *Held*, that this exception did not cover an error in judgment by the master arising from a misconstruction of the bill of lading. *The Knutsford* (1909).

(l) 312 baskets of plums were delivered to the G.S.N. Coy. for carriage from Hamburg to London under a B/L by which the shipowners were exempted from liability for "all.....loss.....from any act, neglect, or default whatsoever of the.....crew, stevedores, servants, or agents of the owners in the..... discharging or navigation of the ship.....or otherwise." When the ship arrived at the wharf at London only 99 baskets were delivered to the carman who had come to the wharf for them. The jury found that all the 312 baskets were discharged out of the ship on to the wharf, but that 213 of these baskets were delivered to the wrong people by the fault of those who had the control of the goods at the wharf. *Held*, that the baskets were lost through an "act, neglect, or default of the agents" of the G.S.N. Coy., and that the latter were therefore protected by the exception in the bill of lading. *Smackman* v. *G.S.N. Co.* (1908).

Harter Act (1893).

The so-called Harter Act (an Act of Congress of the United States, approved on the 13th February, 1893), is a piece of legislation which has proved a most beneficial one to shipowners generally. In the Appendix the Act is fully set out and a summary of cases attached thereto. It is clear that Sec. 3 of the Harter Act affords more protection to the carrier by sea than does the usual form of "negligence clause," and a perusal of the cases cited will fully demonstrate the utility of inserting in all contracts for carriage to and from any port of the United States the following clause:—

"*It is mutually agreed that this contract is subject to all the terms and provisions of and to all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February*, 1893."

The Australian and Canadian Sea Carriage of Goods Acts will also be found in the Appendix. The former has resulted in a good many heavy claims against shipowners, founded upon alleged unseaworthiness in refrigerating machinery and equipment. The Canadian Act, which came into force on the 1st September, 1910, has not yet been in working a sufficient time to gauge its practical results, but neither Act appears to afford as great a measure of protection to shipowners as the Harter Act (1893).

"Sign Bs/L as presented."

It is often stipulated in C/P's that the master shall "sign Bs/L as presented without prejudice to the C/P." This really casts upon the shipowner the obligation of contracting with shippers, through the master, for the charterer's benefit, but the master is not thereby made the agent of the charterer: the latter part of the clause shows that the signing is not meant to affect the rights of the shipowner as against the charterer under the C/P.

Masters must remember that this clause does not justify and cannot compel their signature to any B/L which is known to contain a mis-statement of fact as to the condition of the goods, the date of shipment, or as to any other matter whatsoever. Where the words "without prejudice to the C/P" are omitted, a master is probably bound to sign any *bona fide* Bs/L to which the charterers may require his signature, and without qualification of any kind.

Bs/L must be qualified if necessary.

Verbal assurances or representations made by a shipper to a master with reference to the condition of cargo shipped do not in the least diminish the necessity for qualifying the Bs/L if these are in any way misleading or inaccurate. If these Bs/L pass into the hands of third persons who have no notice or knowledge of any private understanding or arrangement between the shipper and the master, the rights of the indorsee are not in the least degree affected thereby.

The practice of giving Bs/L for the several portions of cargo laden in the several holds will often work to the detriment of the shipowner, unless there is a distinct stipulation in the Bs/L to the effect that any excess in the out-turn of one hold shall be set off against any shortage in another.

Receipts should tally with Bs L.

If at the time goods are brought for shipment they should be in an imperfect or damaged condition, that fact should be distinctly noted on the face of the receipt for such goods, and when the Bs/L are presented to the master for shipment, he should ascertain that there is no inconsistency between them and the mate's receipts. If the merchant insists on clean Bs/L when the receipts are otherwise, a master is in duty bound to refuse to sign same without the necessary qualification.

When Bs/L are presented to a master for his signature, the mate's receipts should be handed back to the master and by him be carefully compared with the particulars in the Bs/L; and these receipts should be carefully preserved by the master in view of any possible dispute upon or after delivery. Want of care in the making out and giving of receipts results year by year in the loss of many thousands of pounds to shipowners.

Bs/L must be correctly dated.

Bs/L should be distinctly and correctly dated—the day on which the shipment is actually completed being the proper date to insert. "If the master is not personally cognisant of the fact and time of shipment, it is his personal duty to inform himself upon both of these points by an examination of the mate's receipts or the log-book, or otherwise, before he signs a B/L for the goods."

Objections to signing before goods on board.

Some of the objections to the signing of Bs/L before shipment are—(1) That there is no certainty that the ship will get the particular goods signed for; (2) That there is no certainty the ship can stow the particular quantity

signed for; (3) That if the master cannot stow such quantity below he must carry it on deck, and thereby commit a breach of his contract to stow below; and (4) That the responsibility of the shipowners is so much the greater, beginning as it does before the goods have actually reached his possession, and in the meantime subject to many risks not contemplated in or provided against by the original contract. B/L exceptions only begin to apply after the goods are actually shipped, the initial and governing word in Bs/L being generally the word "shipped."

Delivery under Bs/L.

Delivery under a B/L must be made to the consignee personally, or his duly authorised agent, or to the assignee of the person who is entitled by the B/L to make an assignment thereof. Under no circumstances should a master deliver any part of the cargo until after presentation of a proper and authentic B/L; and in case of dispute as to the right to possession of the cargo a master should continue to hold the same until he has obtained definite instructions from his owners or their agents.

Delivery under one part of B/L exonerates shipowner.

Where, as is usual, Bs/L have been drawn in a set, and on arriving at the port of discharge, one (and not necessarily the first) part of the B/L is presented, if the master is not aware of the endorsement of any other part, he is justified in delivering in accordance with the indorsement of the part actually presented without inquiry as to the others. A master should always insist upon having what is known as a "master's copy" of every B/L.

A master is sometimes pressed by a shipper to sign Bs/L, known to be false in some material particular, in consideration of the shipper giving a letter of indemnity or a "back letter." Such a transaction is generally speaking intended to cover a common-place fraud. The letters of indemnity are in nine cases out of ten quite

worthless, since a shipper who will give such letters to secure a master's signature to false Bs/L is exactly the sort of individual to try and evade his liabilities thereafter. Whenever circumstances are such as practically to compel a master to sign Bs/L inaccurate in any particular, the master must, at all events, protest.

A charterer is only entitled to load and is only bound to load cargo in those parts and spaces of the ship which are ordinarily used for stowing cargo of the kind contemplated by the C/P.

Illustration.

The Kassala (1899).

By C/P dated 15th December, 1897, s.s. was to load a full and complete cargo of general merchandise at Bombay for European ports, at 18/- per ton. In the course of the loading, freights having gone against charterers, they refused to load cargo in certain spaces—the fore and aft peaks, closed in bridge and poop spaces—contending these were not usual and proper spaces. *Held* by the High Court at Bombay, on a review of a great body of expert evidence, that the charterers were bound to load cargo at the charter rate of freight in the bridge and poop spaces, but not in the peaks. Judgment went for the shipowner for £177 12s. 4d., the difference between the 18/- rate and the rates of 12/6 and 9/-, at which the spaces were filled up without prejudice.

If a charterer stows goods in cabins or deck-houses, or on deck, and no authority is given him to do so by the C/P, he is liable to pay additional freight for all goods so carried. Though a charterer who has contracted to load "a full and complete cargo," loads a cargo which is not actually as much as the ship can reasonably carry, it does not always follow that the ship has any remedy. Custom may favour the charterer.

Illustration.

Cuthbert v. *Cumming* (1855).

Where by a C/P a shipper agreed to load "a full and complete cargo" of sugar, molasses, and/or other lawful produce, and the ship was loaded with hogsheads and puncheons alone, leaving much broken stowage, it was *held*, on action brought by the shipowner for dead freight, that the shipper was entitled to set up a custom at the port of loading to regard a full cargo of hogsheads and puncheons as a full and complete cargo for the ship. On proof of the custom, judgment went for the merchants.

"Unseaworthiness of the ship or her gear, fittings, and equipment, whether existing before, at, or after the commencement of the voyage," is an exception of exceedingly great value, and such is in itself to secure for

the shipowner practical immunity from cargo claims when coupled with a sufficient negligence clause. The exception is frequently qualified and its value reduced by the addition of the words, "provided due diligence has been exercised by the shipowner to make the vessel seaworthy." With this addendum the shipowner is called upon, in case of any claim for damage to cargo, to prove "due diligence," not only on his own part but on the part of his authorised agents and expert assistants ashore.

The following cases dealing with unseaworthiness have recently been before the House of Lords on appeal:—

The Patapsco (1902).

(a) The s.s. *Patapsco* was chartered for a round voyage from Liverpool to the River Plate and back, charterers to provide and pay for all coal used on the voyage, and it was within the contemplation of both parties that the steamer would be coaled at the different ports at which she touched for the different stages of the voyage The charter mutually excepted the parties thereto from the consequences of negligence but not unseaworthiness. The steamer cleared from the River Plate for St. Vincent, but owing to a miscalculation on the part of the engineer, the steamer had an insufficient supply of coal to reach St. Vincent, the result being that she had to put into Pernambuco for fresh supplies. The charterers claimed damages against the shipowners as for breach of charter party, and sought to recover the extra expenses they had been put to. *Held*, on an ultimate appeal to the House of Lords, that the *Patapsco* when she left the Plate was not properly equipped, and that the shipowners were responsible in damages, the obligation on the part of the shipowner to see that the ship was properly bunkered for each successive stage of the voyage remaining, notwithstanding the obligation on the part of the charterers to provide and pay for all coal.

Unseaworthiness.

The Nairnshire (1902).

(b) Several parcels of mutton were shipped at Melbourne on the s.s. *Nairnshire*, under refrigerator Bs/L, which contained two clauses, of which the first was printed in Roman type and contained exceptions of the widest possible kind in perfectly clear language, including damage arising from a defect at the commencement of the voyage. The second clause was printed in small italics and contained exceptions some of which were inapplicable to the carriage of a cargo of meat, and this clause expressly provided that the exceptions were only to apply if reasonable means had been taken to provide against defects and unseaworthiness. During the voyage damage arose by reason of the tainted condition of the ship at the commencement of the voyage, caused by the improper use of carbolic acid by the shipowners' servants. *Held* that the two clauses must be read and construed as far as possible together, and that having regard to the fact that the clause in small print dealt expressly with unseaworthiness, the general words in the large type clause did not override and govern the omnibus exceptions clause in small italics. The shipowner was in the result found liable for the consequences of the unfitness of the holds for the reception of cargo.

Unseaworthiness.

The Schwan (1908).

(c) A parcel of sugar was shipped on the s.s. *Schwan* at Bremen for London in November, 1907, under Bs/L exempting the shipowners from the consequences of loss and damage resulting from defects in hull, tackle, apparatus, machinery, boilers, or from any act, neglect, or default whatsoever of the pilot, master, officers, engineers, crew, stevedores, servants or agents of the owners in the management, loading, stowing, discharging or navigation of the ship, but the shipowners and their agents were to exercise reasonable care and diligence in connection with the ship, her tackle, machinery and appurtenances. The sugar was stowed in No. 2 hold and damage was caused by sea water which

found its way into the hold in the following way: The suction pipe of the ballast donkey pump in the engine room was connected through a cock with two pipes, an inlet pipe from the sea and a suction pipe from the bilges in the holds, including No. 2 hold. This cock which is described as a three-way cock with a two-way inlet was constructed so that by turning the plug of the cock, water could be drawn by the donkey pump either from the sea or from the holds. The evidence shewed that the construction of the cock was defective in that if the plug were placed in certain positions it would be open all three ways at the same time and therefore water could flow from the sea through the pipes and cock into the holds. In the course of the voyage in question the plug must have been in such a position as to allow of sea water flowing into the bilge suction pipe and something became fixed in the non-return valve preventing it from closing properly, thus allowing sea water to flow into No. 2 hold. Cargo owners contended that the defect in the cock rendered the steamer unseaworthy and that reasonable care and diligence had not been exercised by the shipowners. The *Schwan* was a new vessel built at Rostock in 1907. In the Admiralty Court judgment was given in favour of the cargo owners. The Court of Appeal reversed this judgment on the ground that a careful engineer could have adjusted the plug so that the pipe to the bilges would have closed when the pipe communicating with the sea was open and that the non-return valve if in working order would be a sufficient protection. The cargo owners appealed to the House of Lords where the judgment of Mr. Justice Bargrave Deane was upheld on the ground that the steamer was initially unseaworthy, the three-way cock in question being of a dangerous character whereas in this the chief engineer was not acquainted with the exact nature and risks attached to the improper adjustment and regulation of same.

Imperfect equipment.

(d) The s.s. *City of Lincoln* loaded a cargo, including livestock, at La Plata for Natal, but the stowage was so regulated as to make the steamer top heavy and unstable from the outset, with the result that her deck cargo was partly jettisoned on the voyage and partly swept overboard in a gale which otherwise could have been weathered in safety. Action was brought to enforce a claim for damages for non-delivery of cargo in breach of a charter dated December 1st, 1899, and made between W. Sampson and Co. on behalf of the owners and T. S. Boadle & Co., charterers, the *City of Lincoln* belonging to W. Sampson himself. Owners were to appoint a stevedore. At Rosario the steamer took in 20,000 bales of hay and proceeded to La Plata where she took in 770 head of cattle and sheep. The cargo owners case was that the *City of Lincoln*, though in herself and as a ship tight, staunch and strong, and every way fitted for the voyage, was not properly ballasted and was therefore unseaworthy when notice was given that she was prepared to receive her cargo; that the unseaworthiness was attributable to negligence or want of reasonable care on the part of the owner himself. The owner contended that even assuming unseaworthiness he was protected from liability by the exceptions in the charter. The action was tried at Natal lasting several days and in the result the jury found (1) that the steamer was in every way fitted for the voyage before the loading began but became unseaworthy by reason of the method of loading before she left her loading berth; (2) that the owner was personally responsible in that he should have seen that more deadweight was put in the bottom of the steamer. The Court of Appeal and the House of Lords determined that there was evidence of personal negligence of the managing owner and that the exception of unseaworthiness did not protect the owner against the consequences of his own negligence. Judgment went against the shipowner for £7,450.

The City of Lincoln (1903).

Owner personally in fault.

SECTION III.

Chapter XI.

THE REGULATIONS FOR THE PREVENTION OF COLLISIONS AT SEA.

The regulations in substantially their present form came into operation in the year 1863. Certain rules of navigation had for a long time been more or less generally recognized in practice, but as from that year these regulations became compulsory upon British ships, and have now been adopted by every maritime nation of any importance.

M. S. Act, 1894. Sec. 419 (4).

Where in any case of collision it is proved to the Court before which the case is tried that any one of these regulations has been infringed, the ship guilty of the infringement is deemed to be in fault unless it is clearly shown that the circumstances of the case made departure from the regulation necessary. But observe with reference to this section of the Act here referred to that:—

(1.) The infringement must be one having some possible connection with the collision, and the presumption of fault may be met by proof that the infringement could not by any possibility have contributed to the collision.

Illustrations.

The Fanny M. Carvill (1875).

(a) On the occasion of a collision between two ships, the inboard screen of the green light of one ship was one foot short of the regulation length. But on its being proved that the other ship could not by any possibility have seen that green light prior to the collision, *Held* that the ship guilty of the infringement must not in the circumstances be found to blame.

The Homewood (1891).

(b) The E. P. (barque) whilst lying at anchor in the River Mersey with only one riding light exhibited was run into by the H., another barque, and seriously damaged. By the Mersey rules the E. P. was bound to carry two white riding lights; but on its being proved to the satisfaction of the Court that there was no look-out at all on the H., and no person so stationed as to be able to see ahead, *Held* that it immediately became immaterial whether there was one light or two, the absence of the second light by no possibility having any effect upon the collision.

(2.) And where a ship has failed to obey one of the regulations, but the circumstances were such that a competent seaman exercising reasonable care could not have discovered that the regulation was applicable, such ship will not be held to blame.

Illustrations.

(a) A sailing ship (A) going up the English Channel at night close hauled on the port tack sighted the red light of another ship (B) about a point on her starboard bow. The light was carefully watched for a time, and then A's helm was put up on the assumption that B was close hauled on the starboard tack, whereas B was in fact going free, and as in duty bound was then taking steps to keep clear of A under a starboard helm. A collision resulted, but *Held*, after satisfactory proof that those on board A used all reasonable vigilance, that A was not to blame. *The Theodore H. Rand* (1887).

(b) The barque *Killeena*, whilst beating down Channel, close hauled on the port tack, and heading W ¼ S magnetic, observed a red light about a mile off, and from one or two points on the starboard bow. After carefully watching the red light, the officer in charge of the *Killeena* came to the conclusion that it was carried by a ship close hauled on the starboard tack. The helm of the *Killeena* was accordingly put up, but about the same time the helm of the other ship, which was in fact running free, was also put up. A collision resulted, and on the trial of the action it was *Held* that though the *Killeena* had been guilty of a technical breach of Art. 22, yet, in the absence of any negligence on her part, she was not to blame for the collision. *The Killeena* (1891).

It has been laid down that "Where the rule of navigation is a rule by statute, and it is enacted positively that if the rule is not obeyed the breach of it shall in itself impute blame, it is not necessary to consider whether that breach in fact contributed to the collision. When, however, the statute imposing the rule is short of that, it is necessary to see that the actual transgression has been in fact the cause of the accident to some extent, it does not matter how much, and that is matter of proof." The rules and bye-laws made with reference to the navigation of different rivers in England are of the nature last referred to.

When Regulations begin to apply.

It is sometimes difficult to determine when a particular regulation becomes applicable. In the case of the *Banshee*, Lord Esher said:—"Now, at what period of time is it that the regulations begin to apply to two ships? It cannot be said that they are applicable however far off the ships may be. Noboby could seriously contend that if two ships are six miles apart the regulations are applicable to them. . . . . They only apply at a time when, if either of them does anything contrary to the regulations it will cause danger of collision. None of the regulations apply unless that period of time has arrived, and it follows that anything done before the time arrives at which the

regulations apply, is immaterial." And in a judgment in the case of the *Wenona* (Supreme Court, U.S.), it was said:—"Rules of navigation are obligatory upon vessels when approaching each other from the time the necessity for precaution begins; and they continue to be applicable as the vessels advance so long as the means and opportunity to avoid the danger remain. They do not apply to a vessel required to keep her course after the approach is so near that the collision is inevitable, and are equally inapplicable to vessels of every description while they are yet so distant from each other that measures of precaution have not become necessary to avoid a collision."

Amended from time to time.

From time to time by Orders in Council any of these regulations may be annulled or modified, or new regulations made. Such alterations or additions are notified in the *London Gazette*. By Order in Council of 13th October, 1910, a revised code of rules received the requisite authority and came into force on the same date. Since 1897 there has been very little alteration made in the code brought into being in that year. All the great maritime nations have adopted the new regulations (*a*).

Duty to obey.

A master's discretion in the management of his ship is a very wide one, but it cannot be too forcibly impressed upon both masters and officers that the regulations for the prevention of collisions at sea admit of no discretionary application. If it be *absolutely* and *obviously* necessary for the safety of his ship that he depart from a regulation he will be excused, but that necessity must be most clearly proved. In the case of the *Khedive*, a master doing that which he as a skilful navigator thought was the best thing to do under very difficult circumstances was held by the House of Lords to have been guilty of a breach of the old

(*a*) It may be of interest though not of practical importance to note that the ships of Zanzibar, Hawaii, Travancore, Cochin and Muscat remain subject only to the rules of 1880 or 1884.

Article 18. The facts of that case were shortly as follows:—

A collision took place in March, 1878, between the ss. *Voorwarts* and the ss. *Khedive*, off Muka Head, Penang. These steamers were originally on opposite courses, green to green—on such a bearing as that, if both kept their course, there was no danger of collision. At something less than one mile apart the *Voorwarts* put her helm hard-a-port, causing imminent risk of collision. The master of the *Khedive*, immediately on seeing the *Voorwarts'* red light, put his helm hard-a-starboard, and telegraphed "Stand by" to the engine room, followed about a minute later by "Full speed astern." The *Voorwarts* kept her engines working full speed ahead up to the time of the collision. On the trial of the collision action, the Admiralty Court found both ships to blame, but the Court of Appeal found the *Voorwarts* alone to blame, the nautical assessors advising the Court that the master of the *Khedive* acted as a seaman of ordinary care and skill and nerve might fairly be expected to act, but that the right manœuvre would have been to order the engines at once to be stopped and reversed. The assessors further advised the Court that when the *Voorwarts* opened her red light to the *Khedive* a collision was inevitable.

The Khedive (1881).

The House of Lords restored the judgment of the Admiralty Court, holding that actual necessity, not considerations of discretion and expediency, can alone excuse a non-observance of Article 18. Lord Watson, in giving judgment (after referring to the statute) said:—"I think it is impossible to avoid the inference that the legislature did not intend in certain specified circumstances to leave mariners to decide for themselves, but on the contrary, intended to prescribe rules to be observed by all in those circumstances, and that no one was to be excused for non-compliance, or exempted from the statutory consequences of non-compliance with the rules in circumstances to which they were applicable unless he could bring himself within the statutory exception."

The relative importance of the cases of collision brought before the Admiralty Court appears to be steadily increasing. Cases involving but a few hundred pounds are now most frequently dealt with before a single arbitrator or in the County Courts having Admiralty Jurisdiction. The cost of proceedings in the County Courts and the comparative inexperience of the judges make a reference to arbitration highly desirable in the majority of cases: a sound decision can be secured at one-third the aggregate cost. During the first twenty years of the last century only 112 collision cases were tried in the Admiralty Court of this country, whilst the total increased to 153 between the years 1820 and 1840. The advent of steam was no doubt accountable in a great measure for the startling increase for the period between 1840 and 1860—no less than 2,216 cases being determined within that space of time.

In 1909 sixty-three collision cases were determined in the Admiralty Court, whilst about 150 more were settled after

proceedings had been taken. In 44 cases there was judgment for the plaintiffs, and in 19 cases judgment for the defendants.

THE 1910 RULES.

PRELIMINARY.

These Rules shall be followed by all Vessels upon the high seas, and in all waters connected therewith, navigable by sea-going vessels.

In the following Rules every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel.

The words "steam vessel" shall include any vessel propelled by machinery.

A vessel is "under way" within the meaning of these Rules, when she is not at anchor, or made fast to the shore, or aground.

RULES CONCERNING LIGHTS, &c.

The word "visible" in these Rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere.

Article 1.—The Rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited.

Use of the flare-up.

NOTE.—(1.) No other lights whatsoever are to be *carried* as fixed lights. The use of a flare-up is not interfered with in any way, and it is indeed a most effective method under exceptional circumstances of warding off danger. If, however, by the indiscreet use of a flare-up another vessel was misled, and a collision brought about, the vessel so using the flare-up would be found to blame.

Cabin and deck lights.

(2.) The utmost care should be taken to ensure that no cabin light or any galley light or hand lamp carried along the deck be allowed to show in such a way as by possibility to deceive another vessel approaching. It is a very difficult thing for a ship to escape from blame in a collision action after proof that she was showing, even temporarily, any light calculated to mislead. A passenger boat with lights showing up from a long line or lines of port holes would not be guilty of any infringement because it is inconceivable that such lights could be "mistaken" for any prescribed light.

(3.) The duty to exhibit the regulation lights at the proper time and in the proper place is one of exceeding importance, and admits of no delay and no excuse. None of the regulations are more stringently applied by our Courts in collision cases than those which deal with lights.

Illustration.

Where the master of a sailing ship wilfully neglected to carry his regulation side lights whilst running up the South East Trades, and a collision of a disastrous character occurred in consequence the master's certificate was suspended for two years by the Board of Trade; and on a summons at Bow Street charging him with such neglect, he was further punished by a fine of 50*l*. Furthermore, his ship was held solely to blame for the collision. *The Ada Melmore* (1887).

(4.) There are a few cases—of which the following are instances—apparently not provided for in these regulations:—

(a) A sailing barge dropped down stern foremost on the tide, her anchor down to check her way, and her mast lowered on deck. The Court considered that a white light was the best light to exhibit under the circumstances, though the barge was not at anchor within the meaning of Article 11. *The Indian Chief* (1888).

(b) A sailing ship towing another sailing ship. Probably both should carry the ordinary regulation side-lights and nothing further. But *quære* if the ship being towed were totally disabled.

(c) A sailing-ship which has had a side-light carried away and no spare one on board to replace it with. There is no obligation on coasting vessels to carry a spare set of side-lights and presumably a ship would not be held in fault where a master did his best in the matter of substitution but the means adopted proved insufficient to avoid a collision.

Article 2.—A steam vessel when under way shall carry—

(a) On or in front of the foremast, or if a vessel without a foremast, then in the fore part of the vessel, at a height above the hull of not less than 20 feet, and if the breadth of the vessel exceeds 20 feet, then at a height above the hull not less than such breadth, so, however that the light need not be carried at a greater height above the hull than 40 feet, a bright white light, so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass, so fixed as to throw the light 10 points on each side of the vessel, viz., from right ahead to 2 points abaft the beam on either side, and of such a character as to be visible at a distance of at least 5 miles. **Regulation lights for a steamship under way.**

(b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least 2 miles.

(c) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to 2 points abaft the beam on the port side, and of such a character as to be visible at a distance of at least 2 miles.

(d) The said red and green side lights shall be fitted with inboard screens projecting at least 3 feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) A steam vessel when under way may carry an additional white light similar in construction to the light mentioned in subdivision (a). These two lights shall be so placed in line with the keel that one shall be

at least 15 feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance.

NOTE.—(1.) "A literal compliance with the regulations is an impossibility; what we must look to is whether there is a *reasonable* compliance." (Per Butt, J., in the *Fire Queen*.)

Illustrations.

(a) Where it was proved that the starboard light of a ship was obscured by the cat-head over an area of from $2\frac{1}{2}$ to 3 degrees, but with this exception the side light showed properly over an unbroken range of ten points, *Held* not a culpable breach of this article.

(b) Where local regulations, having statutory force, required a vessel with two masts lying at anchor in the river to exhibit an after riding-light double the height of the bow light, but her after light was proved in fact to have been about five feet more than double the height of the bow light, *Held* not a culpable breach of this article.

(2.) A steamer is under way within the meaning of this article as soon as her moorings are cast off, or her anchor lifted from the ground, even though she is not making actual way through the water. So also a steamer with steam on her boilers dropping up river on the tide stern foremost is under way, and should carry side lights.

(3.) It has been held (in 1895) that a steamer riding to her chains with her anchors unshackled is "under way," and has to carry side lights; so also a steamer riding to a sea anchor.

(4.) A steamship under steam and in tow should carry her mast head and side lights; if not under steam, she should carry side lights alone.

(5.) A steam trawler must, after getting in her trawl and immediately she ceases to be incumbered by it, exhibit the lights prescribed by Article 2 and cease to carry the alternative lights prescribed by Article 9.

(6.) Where it has been shown to the satisfaction of the Court that shortly before a collision a ship's lights were in any respect defective, or did not show as required by the regulations, such ship will be held to blame unless she can prove beyond all reasonable doubt that the defect in or defective range of the light could not have affected the collision.

Illustrations.

The Duke of Buccleuch (1891).

(a) In a case of collision between a steamer and a sailing ship, it was proved that the foot of the foresail of the sailing ship would by the bellying of the sail, aided by the rolling of the ship, occasionally obscure the green light from the view of a steamer approaching the sailing ship end on or slightly on the bow. It was, however, clearly proved that the steamer was in fact approaching on a bearing of about $1\frac{1}{2}$ points. Under the special circumstances of the case it was *Held* that the sailing ship was not to blame, since it had been shown that the infringement could not possibly have contributed to the collision.

The Gustav (1863).

(b) Where the side lights of a sailing ship were fixed to the pawl bitts, and there was strong evidence from another sailing ship that the lights were not and could not have been seen, it was *Held* that the ship so carrying her lights was to blame for the collision.

The Chusan (1885).

(c) But in a case where a sailing trawler, whilst carrying a mast head light in addition to the ordinary side lights, came into collision with a steamer, and the look-out on the steamer was so bad that the masthead light was not in fact seen, it was *Held* that the trawler was not to blame, the breach of the rules not having in any way contributed to the collision.

Lights for steamship towing.

Article 3.—A steam vessel when towing another vessel shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than six feet apart, and when towing more than one vessel shall carry an additional bright white light six feet above or below such lights, if the length of the tow, measuring from the stern of the towing vessel to the stern of the last vessel towed, exceeds 600 feet. Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in Article 2 (a), except the additional light, which may be carried at a height of not less than 14 feet above the hull.

Such steam vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam.

NOTE.—The new rules do not specifically provide for the case of a sailing ship towing another vessel. It would appear, however, that both must carry the usual side lights.

Not under command lights.

Article 4.—(a) A vessel which from any accident is not under command, shall carry at the same height as the white light mentioned in Article 2 (a), where they can best be seen, and, if a steam vessel, in lieu of that light, two red lights, in a vertical line one over the other, not less than six feet apart, and of such a character as to be visible all round the horizon at a distance of at least two miles; and shall by day carry in a vertical line one over the other, not less than six feet apart, where they can best be seen, two black balls or shapes each two feet in diameter.

Lights for a cable ship.

(b) **A vessel employed in laying or in picking up a telegraph cable shall carry** in the same position as the white light mentioned in Article 2 (a), and, if a steam vessel, in lieu of that light, three lights in a vertical line one over the other, not less than six feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all round the horizon, at a distance of at least two miles. By day she shall carry in a vertical line one over the other, not less than six feet apart, where they can best be seen, three shapes not less than two feet in diameter, of which the highest and lowest shall be globular in shape and red in colour, and the middle one diamond in shape and white.

Side lights if making way.

(c) The vessels referred to in this Article, when not making way through the water, shall not carry the side lights, but when making way shall carry them.

(d) The lights and shapes required to be shown by this Article are to be taken by other vessels as signals that the vessel showing them is not under command and cannot therefore get out of the way.

These signals are not signals of vessels in distress and requiring assistance. Such signals are contained in Article 31.

Note.—(1.) The globular red lights and signal balls referred to form a necessary part of the outfit of every steamship or other vessel coming within the purview of these regulations. Every ocean-going ship should have a spare set of regulation lights always ready for use.

(2.) Every ship not under command but making way through the water is required to carry side-lights in addition to the three red globular lights; and this is so though making more leeway than headway. A vessel is said to be not under command when the course of the vessel cannot be so properly controlled or directed as to enable her when necessary to keep clear of another ship or to avoid any peril which she may encounter in the course of navigation.

Illustrations.

The P. Caland (1892).

(a) Whilst a steamer was proceeding up the English Channel at the rate of 11 knots an hour the engines were rendered partially ineffective by the slacking back of a nut in the slide valve of the H.-P. cylinder. The speed was thereby reduced to from four to five knots, and was gradually diminishing, and the auxiliary valves on the H.-P. and L.-P. cylinders were being worked by hand pending arrival at a good anchorage ground. *Held* that the regulation masthead and side-lights for a steamship under way were the proper lights to exhibit, and that the exhibition of three red lights was under the circumstances improper.

But Lord Herschell, in giving judgment in the *P. Caland*, said :—"Suppose a vessel, though having steerage way on her, and capable of being steered to port or starboard, yet, owing to some disablement, answered her helm but very slowly, so that if an occasion for doing so should arise she could not get out of the way of another vessel in the manner which such vessel would have reason to anticipate. And suppose, though she can stop and reverse, she can only do so after great and unusual delay. I am not satisfied in either of these cases she might not be properly described as not under command, and not able to keep out of the way of other vessels. Suppose again that, owing to a breakdown of the machinery, it ceasing to be capable of propelling the vessel is reasonably regarded as imminent, and likely to occur at any moment. I am not satisfied that in this case a vessel may not properly be said within the meaning of the rule not to be under command. If she were to allow other vessels to continue their course, and to manœuvre on the assumption that she would get out of their way, she might prove unable to take any action at the very time when a change of direction on her part could alone enable her to keep out of the way, and thus avoid disaster.

The Hawthornbank (1903).

(b) The barque *Hawthornbank* (1369 tons) was on the 16th October, 1903, putting back to the River Thames after collision with a steamer in the English Channel. Her fore topmast and head stays with sails and gear had been carried away. Her stem was broken and her bows stove in above the water line. The barque under her lower topsail was moving through the water at about three knots an hour and heading E.N.E. magnetic, and exhibiting side lights, a stern light, and the regulation red lights for a vessel not under command. In these circumstances a brigantine close hauled on the starboard tack was sighted on the port bow, and the helm of the *Hawthornbank* was ported. A collision occurred, the *Hawthornbank* with her stem striking the brigantine on the starboard bow and sinking her. *Held* by Gorell Barnes, J., that the *Hawthornbank* was alone to blame, as she had indicated by her two red lights and side lights that she was not under command, and was making way through the water. She should therefore have kept her course so as to enable the close-hauled vessel, otherwise entitled to keep her course, to get out of the way.

(3.) A ship hard and fast ashore is under no obligation to exhibit the two black balls by day. A ship getting ashore temporarily in a navigable channel or fairway should however exhibit the lights set out in (a); and if there be at such time any risk of collision, a flare-up should also be shown to indicate the more promptly and urgently the existence of risk to other vessels navigating near at hand.

Illustration.

A steamer whilst navigating the River Elbe ran aground forward, her stern being in deep water. A white light only was exhibited by her whilst in this position. *Held*, by the Hanseatic Court of Appeal, in a collision action, that the steamer was to blame for showing a white instead of the regulation red lights.

(4.) Article 7 expressly exempts steam vessels of less than 40 tons gross, and all vessels of under 20 tons gross, whether propelled by sails or oars, from the operation of Article 4.

Lights for a sailing ship.

Article 5.—A Sailing Vessel under way, and any vessel being towed, shall carry the same lights as are prescribed by Article 2 for a steam vessel under way, with the exception of the white lights mentioned therein, which they shall never carry.

NOTE.—(1). A ship hove-to on the port tack with all sail set is a ship under way within the meaning of this article, and must keep out of the way of a ship on the starboard tack.

(2). Owners of sailing ships might well give more attention to the matter of fixing the side lights at the broadest part of the ship, and in such a position as that obscuration by sails or rigging shall be a practical impossibility. "With the full concurrence of the Elder Brethren, I say that the owners of foreign ships, and of many colonial ships, run great risks by persistently carrying their lights aft. I have great doubts whether when the lights are so carried, the regulations are complied with. However that may be, *I think it is negligence to have no apparatus for carrying lights further forward*, so that when the weather allows the lights can be carried there." (Per Butt, J., *The Vandalia*).

(3.) As a general rule a vessel is not "under way" within the meaning of the rules even though making way through the water if at such time she is wholly unmanageable.

Bad weather lights for small vessels.

Article 6.—Whenever, as in the case of small Vessels under way during bad weather, the green and red side lights cannot be fixed, these lights shall be kept at hand lighted and ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

Lights for small craft.

Article 7.—Steam vessels of less than 40, and vessels under oars or sails of less than 20 tons gross tonnage, respectively, and rowing boats, when under way, shall not be obliged to carry the lights mentioned in Article 2 (a), (b) and (c), but if they do not carry them they shall be provided with the following lights :—

1. Steam vessels of less than 40 tons shall carry : (a) In the fore part of the vessel, or on or in front of the funnel, where it can best be seen, and at an height above the gunwale of not less than 9 feet, a bright white light constructed and fixed as prescribed in Article 2 (a), and of such a character as to be visible at a distance of at least 2 miles ; (b) Green and red side-lights constructed and fixed as prescribed in Article 2 (b) and (c), and of such a character as to be visible at a distance of at least 1 mile, or a combined lantern showing a green light and a red light from right ahead to 2 points abaft the beam on their respective sides. Such lantern shall be carried not less than 3 feet below the white light.

2. Small steamboats, such as are carried by sea-going vessels, may carry the white light at a less height than 9 feet above the gunwale, but it shall be carried above the combined lantern mentioned in subdivision 1 (b).

3. Vessels under oars or sails of less than 20 tons, shall have ready at hand a lantern with a green glass on one side and a red glass on the other, which, on the approach of or to other vessels, shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.

4. Rowing boats, whether under oars or sails, shall have ready at hand a lantern showing a white light, which shall be temporarily exhibited in sufficient time to prevent collision.

The vessels referred to in this Article shall not be obliged to carry the lights prescribed by Article 4 (a), and Article 11, last paragraph.

Lights for pilot boats.

Article 8.—Pilot Vessels, when engaged on their station on pilotage duty, shall not show the lights required for other vessels, but shall carry a white light at the mast head, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed 15 minutes.

On the near approach of or to other vessels they shall have their side-lights lighted, ready for use, and shall flash or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be shown on the port side, nor the red light on the starboard side.

A pilot-vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board, may show the white light instead of carrying it at the masthead, and may, instead

of the coloured lights above mentioned, have at hand ready for use a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above.

A steam pilot vessel exclusively employed for the service of pilots licensed or certified by any pilotage authority or the Committee of any pilotage district, when engaged on her station on pilotage duty and not at anchor shall, in addition to the lights required for all pilot boats, carry at a distance of eight feet below her white masthead light a red light visible all round the horizon, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and also the coloured side lights required to be carried by vessels when under way. Lights for steam pilot boats.

When engaged on her station on pilotage duty and at anchor, she shall carry, in addition to the lights required for all pilot boats, the red light above mentioned but not the coloured side lights.

Pilot-vessels, when not engaged on their station on pilotage duty, shall carry lights similar to those of other vessels of their tonnage.

Article 9.—*† Fishing vessels and fishing boats, when under way and when not required by this Article to carry or show the lights hereinafter specified, shall carry or show the lights prescribed for vessels of their tonnage under way. Lights for fishing craft.

(a) Open boats, by which is to be understood boats not protected from the entry of sea water by means of a continuous deck, when engaged in any fishing at night, with outlying tackle extending not more than 150 feet horizontally from the boat into the seaway, shall carry one all-round white light.

Open boats, when fishing at night, with outlying tackle extending more than 150 feet horizontally from the boat into the seaway, shall carry one all-round white light, and in addition, on approaching or being approached by other vessels, shall show a second white light at least 3 feet below the first light and at a horizontal distance of at least 5 feet

* This article does not apply to Chinese or Siamese vessels.

† The expression "Mediterranean Sea" contained in sub-sections (b) and (c) includes the Black Sea and the other adjacent inland seas in communication with it.

away from it in the direction in which the outlying tackle is attached.

Drifters. (b) Vessels and boats, except open boats as defined in sub-division (a), when fishing with drift nets, shall, so long as the nets are wholly or partly in the water, carry two white lights where they can best be seen. Such lights shall be placed so that the vertical distance between them shall not be less than 6 feet and not more than 15 feet, and so that the horizontal distance between them, measured in a line with the keel, shall be not less than 5 feet and not more than 10 feet. The lower of these two lights shall be in the direction of the nets, and both of them shall be of such a character as to show all round the horizon, and to be visible at a distance of not less than 3 miles.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea, sailing fishing Vessels of less than 20 tons gross tonnage shall not be obliged to carry the lower of these two lights; should they, however, not carry it, they shall show in the same position (in the direction of the net or gear) a white light, visible at a distance of not less than one sea mile, on the approach of or to other vessels.

Line fishing. (c) Vessels and boats, except open boats, as defined in sub-division (a), when line-fishing with their lines out and attached to or hauling their lines, and when not at anchor or stationary within the meaning of sub-division (h), shall carry the same lights as vessels fishing with drift nets. When shooting lines, or fishing with towing lines, they shall carry the lights prescribed for a steam or sailing vessel under way respectively.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea, sailing fishing vessels of less than 20 tons gross tonnage shall not be obliged to carry the lower of these two lights; should they, however, not carry it, they shall show in the same position (in the direction of the lines) a white light, visible at a distance of not less than one sea mile on the approach of or to other vessels.

Trawlers. (d) Vessels, when engaged in trawling, by which is meant the dragging of an apparatus along the bottom of the sea—

1. If steam vessels, shall carry in the same position as the white light mentioned in Article 2 (a), a tri-coloured

lantern so constructed and fixed as to show a white light from right ahead to two points on each bow, and a green light and a red light over an arc of the horizon from two points on each bow to two points abaft the beam on the starboard and port sides respectively; and not less than 6 nor more than 12 feet below the tri-coloured lantern a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon.

2. If sailing vessels, shall carry a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon, and shall also, on the approach of or to other vessels, show where it can best be seen a white flare-up light or torch in sufficient time to prevent collision.

All lights mentioned in sub-division (d) 1 and 2 shall be visible at a distance of at least 2 miles.

(e) Oyster dredgers and other vessels fishing with dredge nets shall carry and show the same lights as trawlers.

(f) Fishing vessels and fishing boats may at any time use a flare-up light in addition to the lights which they are by this Article required to carry and show, and they may also use working lights.

(g) Every fishing vessel and every fishing boat under 150 feet in length, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least one mile. Anchor lights.

Every fishing vessel of 150 feet in length or upwards, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least one mile, and shall exhibit a second light as provided for vessels of such length by Article 11.

Should any such vessel, whether under 150 feet in length, or of 150 feet in length or upwards, be attached to a net or other fishing gear, she shall on the approach of other vessels show an additional white light at least 3 feet below the anchor light, and at a horizontal distance of at least 5 feet away from it in the direction of the net or gear.

Signals when (1) fast to bottom.

(h) If a vessel or boat when fishing becomes stationary in consequence of her gear getting fast to a rock or other obstruction, she shall in daytime haul down the day-signal required by sub-division (k); at night show the light or lights prescribed for a vessel at anchor; and during fog, mist, falling snow or heavy rain-storms make the signal prescribed for a vessel at anchor. (See sub-division (d) and the last paragraph of Article 15).

(2) in fog or snow.

(i) In fog, mist, falling snow or heavy rain-storms, drift net vessels attached to their nets, and vessels when trawling, dredging, or fishing with any kind of drag net, and vessels line fishing with their lines out, shall, if of 20 tons gross tonnage or upwards, respectively, at intervals of not more than one minute, make a blast; if steam vessels, with the whistle or syren, and if sailing vessels with the fog horn; each blast to be followed by ringing the bell. Fishing vessels and boats of less than 20 tons gross tonnage shall not be obliged to give the above-mentioned signals; but if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.

Basket signal.

(k) All vessels or boats fishing with nets or lines or trawls, when under way, shall in daytime indicate their occupation to an approaching vessel by displaying a basket or other efficient signal where it can best be seen. If vessels or boats at anchor have their gear out, they shall, on the approach of other vessels, show the same signal on the side on which those vessels can pass.

The vessels required by this Article to carry or show the lights hereinbefore specified shall not be obliged to carry the lights prescribed by Article 4 (a), and the last paragraph of Article 11.

Note.—The regulations dealing with the lights for fishing craft are almost of necessity complex and diversified. It is difficult to provide for all contingencies, and fresh descriptions of craft are being introduced. The propriety of particular lights not infrequently calls for determination by the Courts.

Illustration.

The Cockatrice (1908).

A steam drifter was fishing in the North Sea with over 2,000 yards of gear out, and was exhibiting the two white lights prescribed by Article 9 (b), when those in charge observed, upwards of a mile away, a vessel which they thought was entangled in their gear. They thereupon cast off and buoyed the nets, and steamed up to the other vessel, but so negligently manœuvred their own vessel that she was sunk in collision. The other vessel, which proved to be a

steam trawler, had, prior to the collision, been trawling in one direction for an hour, then in the opposite direction for an hour, and then turned again, shooting, and hauling in her trawl in the usual way, and all the time carrying the tri-coloured lantern required by Article 9 (d). On the trial it was *Held* that the drifter had infringed the regulations, in that when she left her nets, she should have taken in her fishing lights and exhibited the "under way" lights; whilst the steam trawler had rightly exhibited the triplex light the whole time, for she was to be deemed to be trawling, not only when she had her trawl down, but during the interval between hauling it up and shooting it again, though if she hauled up her trawl, and, instead of shooting it at once, steamed off to trawl over some other ground, it would then become necessary for her to exhibit "under way" lights.

Article 10.—A Vessel which is being overtaken by another shall show from her stern to such last-mentioned vessel a white light or a flare-up light.

The white light required to be shown by this Article may be fixed and carried in a lantern, but in such case the lantern shall be so constructed, fitted and screened that it shall throw an unbroken light over an arc of the horizon of 12 points of the compass, viz., for six points from right aft on each side of the vessel, so as to be visible at a distance of at least one mile. Such light shall be carried as nearly as practicable on the same level as the side lights.

Meaning of "overtaken."

NOTE.—(1.) A ship (A) is being *overtaken*, within the meaning of this Article, when another (B), by reason of greater speed, is coming nearer to (A), (B) throughout being within the area not covered by the lights of (A) and in such a position as that those lights could not be seen by those on board (B).

Light, if fixed, must not be misleading.

(2.) If a *fixed* stern light is carried in such a manner as to mislead, or by reasonable probability is calculated to mislead overtaking vessels, this Article is infringed. The stern light should never be allowed to show over any part of the area covered by the side lights.

Illustration.

The Imbro (1889).

A steamer bound up the English Channel at night sighted a white light and afterwards a red light, the first a little on the starboard bow, the red a little on the port bow. The officer in charge of the steamer regarded the lights as belonging to different ships, and navigated accordingly, whereas in reality the white light was the stern light of a sailing ship showing over a part of the area of the red light of the same ship. *Held*, the sailing vessel to blame for carrying a permanent fixed light in such a manner as to show in the area of the red.

(3.) One short exhibition of a stern light is not a compliance with this Article. A sufficiently good light must be shown at least from time to time so long as a vessel is being overtaken.

Illustrations.

The Essequibo (1888.)

(a) Where it was proved that the only exhibition of a light by a sailing ship to an overtaking steamer was of about two minutes' duration, and that a collision resulted several minutes after the light was shown, it was *held* that the sailing ship was in fault.

The Patroclus (1888.)

(b) Where the mate of a sailing ship, seeing a steamer overtaking him, took one of the binnacle lamps from its place and waved it over the stern, it was *held* that the barque was solely to blame for exhibiting a light which in the circumstances was insufficient.

(4.) The mere fact of being overtaken makes it incumbent to show the stern light or a flare up. If an officer waits until there is apparent risk of collision he will almost certainly be found in fault.

Illustration.

The Supernal (1887.)

From a ketch proceeding down the Bristol Channel the masthead and red lights of a steamer were sighted about a mile distant, and about a point on the ketch's starboard quarter. As long as the steamer's red light kept in view there was no apparent risk of collision, and no stern light was shown from the ketch, though one was lighted and kept ready to exhibit. When the steamer had drawn up to within a few lengths of the ketch the steamer's course was suddenly altered more to the southward, and coming on fast she struck the ketch on the quarter, and sank her; a stern light was shown immediately the green light came into view, but the ketch was *held* alone to blame.

Compare,

The Orion (1892).

A British sailing trawler at work in the North Sea by night, showing a white light at her masthead, sighted the red light of a barque about four points on the port bow, distant about one mile. The red light broadened until at about one-third of a mile distant; the red was suddenly shut in and the green came into sight, whereupon a red flare was shown, and then another, but a collision occurred. *Held* the barque alone to blame, and that until the green light was seen there was no obligation to show any special light or flare on the trawler.

Anchor lights.

Article 11.—A vessel under 150 feet in length, when at anchor, shall carry forward, where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all round the horizon at a distance of at least one mile.

A vessel of 150 feet or upwards in length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than 20 and not exceeding 40 feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than 15 feet lower than the forward light, another such light.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry.

A vessel aground in or near a fairway shall carry the above light or lights and the two red lights prescribed by Article 4 (a).

Note.—(1.) That this regulation is frequently infringed by the skippers of small craft cannot be doubted. It demands that an anchor light shall not only be exhibited, but shall show in a *clear uniform and unbroken* manner.

Illustration.

A sailing ship was riding at anchor by night in Belfast Lough with her mainsail scandalised with an anchor light hung from her forestay. In these circumstances the ship was run down and sunk by a steamer which came up almost dead astern, and only saw the ship when about 60 yards distant. *Held* the sailing ship to blame for the partial obscuration of the anchor light by the mainsail. *The Tolka* (1886).

(2.) In some more or less open harbours, *e.g.*, in Brixham harbour, the numerous craft at anchor habitually disregard this rule without any serious consequence: at the same time the right of recovery of damages would be seriously prejudiced in case of collision at night. Where vessels are moored alongside a quay or wharf they need not, generally speaking, exhibit an anchor light, but the outermost vessels in a tier, whether in a harbour or a river, should certainly do so.

(3.) The point of time when a vessel ceases to be at anchor is not infrequently in dispute.

Illustrations.

(a) On the 13th August, 1900, the barque *Romance* was lying at anchor head down river off Monksferry in the Mersey with her anchor lights up. About 7 p.m. the screw tug *Knight of the Cross* came up and made fast on the port side whilst another tug made fast on the starboard side. Both tugs exhibited the regulation lights for a steam vessel towing another vessel. Whilst the tugs were holding the barque against the tide and moving her up to her anchor with a view to her getting it on board, the s.s. *Javary* coming up the Mersey was swept by the strong tide on to the bows of the *Romance*. It was contended on behalf of the *Javary* that the tugs improperly exhibited their under-way lights, thereby misleading those on board the *Javary*. *Held* by Barnes, J., that the tugs were under way, and therefore rightly exhibited their towing lights and side lights, but further held that until a sailing vessel has actually lifted her anchor from the ground she should continue to exhibit the anchor light. *The Knight of the Cross.* (1901).

(b) The s.s. *Veritas* on the night of the 12th October, 1900, was lying at anchor in the Mersey with a Liverpool pilot on board, and was exhibiting two white lights. The tug *Prarie Cock* was fast alongside to assist in holding the *Veritas* up against the flood tide to avoid the possibility of her anchor dragging. Whilst so assisting the *Veritas* the *Prarie Cock* was exhibiting the under-way lights, viz., masthead light and side lights. *Held* that these lights were improper lights in the circumstances, and that the *Veritas* was to blame for her failure to prevent the tug infringing the regulations. *The Veritas* (1901).

Article 12.—Every vessel may, if necessary in order to attract attention, in addition to the lights which she is by these Rules required to carry, show a flare-up light or use any detonating signal that cannot be mistaken for a distress signal. Special signals.

Article 13.—Nothing in these Rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition of recognition signals adopted by shipowners, which have been authorised by their respective Governments and duly registered and published. Lights for Government ships.

Article 14.—A steam vessel proceeding under sail only, but having her funnel up, shall carry in daytime, forward, where it can best be seen, one black ball or shape two feet in diameter.

Sound signals for fog, &c.

Article 15.—All signals prescribed by this Article for vessels under way shall be given:

1. By "steam vessels" on the whistle or siren.

2. By "sailing vessels and vessels towed" on the fog-horn.

The words "prolonged blast" used in this Article, shall mean a blast of from four to six seconds duration.

A steam vessel shall be provided with an efficient whistle or siren, sounded by steam or some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog-horn, to be sounded by mechanical means, and also with an efficient bell (*). A sailing vessel of 20 tons gross tonnage or upwards shall be provided with a similar fog-horn and bell.

In fog, mist, falling snow, or heavy rain storms, whether by day or night, the signals described in this Article shall be used. as follows; viz.:—

(a) A steam vessel having way upon her, shall sound, at intervals of not more than two minutes, a prolonged blast.

(b) A steam vessel under way, but stopped and having no way upon her, shall sound, at intervals of not more than two minutes, two prolonged blasts, with an interval of about one second between them.

(c) A sailing vessel under way shall sound, at intervals of not more than one minute, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.

(d) A vessel, when at anchor, shall, at intervals of not more than one minute, ring the bell rapidly for about five seconds.

(e) A vessel, when towing, a vessel employed in laying or in picking up a telegraph cable, and a vessel under way, which is unable to get out of the way of an approaching vessel through

(*) In all cases where the Rules require a bell to be used a drum may be substituted on board Turkish vessels or a gong where such articles are used on board small sea-going vessels.

being not under command, or unable to manœuvre as required by these Rules shall, instead of the signals prescribed in sub-divisions (a) and (c) of this Article, at intervals of not more than two minutes, sound three blasts in succession, viz. : one prolonged blast followed by two short blasts. A vessel towed may give this signal and she shall not give any other.

Sailing vessels and boats of less than 20 tons gross tonnage shall not be obliged to give the above-mentioned signals, but if they do not, they shall make some other efficient sound-signal at intervals of not more than one minute.

NOTE.—(1.) Where it is proved that a fog-horn was at a material time being used which was not in compliance with this Article, the Court will not go into the question of efficiency, but will inevitably find the ship using that horn to blame.

Illustrations.

(a) Where in a case of collision between a sailing ship and a steamer, it was admitted by the sailing ship that she was using a mouth-horn, and it was further alleged that the particular mouth-horn used was in fact superior in power to the mechanical fog-horn on board, the Court *held* the sailing ship to blame, though in other respects her conduct was without fault. *The St. Leonards* (1883).

(b) Where in a case of collision it was proved that the only means of signalling on board a fishing smack was by blowing through the chimney of the binnacle lamp, it was *held* that the smack was to blame. The warning sound evolved was by no means contemptible, but the Court declined to consider whether or not the steamer was to blame for not hearing it before sighting the smack. *The Northcote* (1890).

Transmission of sound in a fog.

(2.) The fact that sound is not transmitted through a fog with the same degree of certainty as through a clear atmosphere is fully recognized by the Courts; and where it is proved that the fog-horn or whistle of one ship was being duly sounded, and it is on the other hand alleged by those on board a ship approaching in an opposite direction that no blasts or signals were heard, the fact that they were *not* heard is not proof of a bad look-out on board the last-named ship. In the case of the *Rosetta*, Sir James Hannen said :—

"I desire to say emphatically that it is impossible to infer from the fact that a whistle is not heard in a fog that therefore there is an inefficient look-out on the vessel which does not hear it. It depends on other circumstances. It is not to be inferred that, because from a particular distance at which in clear weather a signal could be heard, it is not heard at that distance in a fog, there is a bad look-out. I have specially consulted the Trinity Brethren on the subject. They have given me the benefit of their large knowledge and experience, and they say that what may be called the vagaries of sound in a fog are of a most astonishing character." *The Rosetta* (1888).

But a most striking application of this view is afforded by a case which went to the House of Lords. The circumstances were shortly as follows :—

The ss. *Ripon City*, of 2,141 tons register, bound out from London in ballast, encountered a dense fog in Woolwich Reach, and came to anchor in about mid-stream off the Arsenal. A good anchor light was exhibited, and a good bell was rung almost continuously at the break of the forecastle. The tide was ebb, and the *Ripon City* lay swung to the ebb. The ss. *Culgoa*, of 2,937 tons register, *The Culgoa* (1894).

with a crew of 46 hands, bound out with cargo and passengers to Australia, ran into the same fog, and before her pilot had had time to bring the ship to anchor, she ran into and sank the *Ripon City*, the stem of the *Culgoa* striking the port bow of the *Ripon City*. Pilotage was compulsory for the *Culgoa*, but on the trial it was admitted that no one of the officers or crew either saw the light or heard the bell of the *Ripon City* before the collision, although the light was seen by both the pilot and his assistant when about one and a-half to two lengths from the *Ripon City*. On the trial, Mr. Justice Barnes found as a fact that those on board the *Culgoa* were doing their best to keep a proper look out, and that proper care was exercised. He also said that he was "informed by the Elder Brethren with regard to their experience of the effect of the fog, even if the bell was continuously going, it is quite possible that it should not be heard even at a hundred yards distance." The Court of Appeal (Esher, M.R., Bowen and Kay, L.J.J.) unanimously reversed the decision of the Admiralty Court, holding that the *Culgoa* had failed to satisfy the burden of proof, and to give any reasonable explanation of their not hearing the bell nor seeing the light; this Court further held the pilot of the *Culgoa* and the tug boat ahead of the *Culgoa* were also in fault—the pilot for not bringing up sooner than he did, and the tug for not reporting the *Ripon City* as soon as she was sighted. The House of Lords reversed the judgment of the Court of Appeal on every point, holding that since it was found as a fact that the crew of the *Culgoa* had exercised reasonable care, and had done their best, they could not be found in fault for not hearing and not seeing.

(3.) In the disastrous case of the *Gladiator* and *St. Paul* the question as to when the whistle or siren should be set going for fog, snow, &c., was discussed at length. The facts of the case are shortly as follows:—

The St. Paul (1908).

H.M.S. *Gladiator* was a second class protected cruiser of 5,750 tons displacement, manned by a crew of about 250 hands all told. Whilst proceeding up the Solent between Hurst Castle and Victoria Fort on the afternoon of the 25th April, 1908, on a course E. by N., she was making about nine knots an hour. There were occasional snow squalls, the *Gladiator* was duly sounding her siren. In these circumstances those on board the cruiser saw, at a distance of about half-a-mile, bearing ahead and a little on the port bow, the s.s. *St. Paul* (11,629 tons gross) on voyage from Southampton to New York. The *St. Paul* was on a course W. ½ S. magnetic and was making from 9 to 10 knots. The helm of the *Gladiator* was at once starboarded thirty degrees, but the *St. Paul* came on at considerable speed and closed in as if under port helm, whereupon the helm of the cruiser was put hard a port. The *St. Paul*, however, with her stem struck the starboard side of the cruiser about midships, causing her to sink shortly afterwards with loss of life. The cruiser charged those on board the *St. Paul* with (inter alia) failing duly to sound the appropriate signal whilst under way in falling snow and with excessive speed. The *St. Paul* was not sounding regular signals for falling snow, there being according to those on board no necessity for this. The *Gladiator* was *held* alone to blame on the facts for improperly starboarding, but in relation to whistle signals the Court found that the regulations do not in terms apply to a vessel approaching falling snow, and, therefore, those in charge must, in such a case, be guided by considerations of good seamanship with a view to ensure that their vessel shall be going at a moderate speed when she is herself enveloped in falling snow, and similar considerations will indicate to them the necessity, as in the analagous case of fog, of giving warning of the presence of their vessel by sounding the signal whilst in the vicinity of falling snow.

Speed in a fog.

Article 16.—Every vessel shall, in a fog, mist, falling snow, or heavy rain storms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

A steam vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her

engines, and then navigate with caution until danger of collision is over.

NOTE.—(1.) What is a "moderate" speed in any particular case must depend upon a fair consideration of all the circumstances. "Moderate speed" is a purely relative term. That may be moderate speed in one locality which would be most unreasonable in another. The following are examples of cases in which the Court has had to determine whether, under all the circumstances of each case, a particular ship was or was not acting in compliance with this article:— **Moderate speed in a fog.**

(a) A sailing ship was proceeding in a thick fog at the rate of more than four knots an hour along the ordinary up and down track of ships in the English Channel. *Held* to blame for not reducing her speed as much as she could consistently with retaining steerage way. *The Zadok* (1883).

(b) "In a dense fog in the Bristol Channel it is clear that a vessel must not go faster than will enable her to be kept under command." (Per Bowen, L.J.) Where a sailing ship was navigated in that locality at a somewhat greater speed, she was *held* to blame. *The John Mac Intyre* (1884).

(c) A steamer, proceeding at full speed on a S.W. course off the West Coast of Jutland, observed a fog bank coming off the land, but did not ease her speed until the fog had covered her, when the engines were slowed. Before she had appreciably run off any of her full speed another steamer was sighted ahead, and a collision resulted. *Held* to blame for not reducing speed earlier. *The Johanna Oelssner* (1895).

(d) The ss. *Werfa* in course of a voyage from Cardiff to Brest, encountered foggy weather off Hartland, and the weather continued more or less thick as far as Trevose Head, off which point the *Werfa* came into collision with the ss. *Teutonia*, proceeding on an opposite course. On the trial it was proved that the *Werfa* ran the 32 miles from Hartland to Trevose in about five hours. *Held* to blame for proceeding at an immoderate rate of speed. *The Teutonia* (1895).

(2.) There are, of course, circumstances in which it is incumbent on a ship to come to an anchor at the earliest possible opportunity. "That men will go ahead in a fog so dense that the forepart of their own vessel is indistinguishable from the bridge is a fact beyond dispute. It is little short of madness; and it has this moreover against it, that a captain, besides risking his own ship and ship's company, is also a danger to other men who have wisely and properly stopped or anchored."

(3.) The following propositions would appear to derive authority from recent decisions:— **As to the conduct of ships in a fog.**

(a) A ship is not justified in going at such a rate of speed in a mist or fog as to make it practically impossible to avoid collision with another ship at anchor sighted ahead as soon as it could be sighted under prevailing conditions.

(b) In a dense fog in narrow and frequented waters a ship should be brought to an anchor as soon as possible.

(c) In a dense fog in open but frequented waters a ship should only proceed at a rate of speed sufficient to give her steerage way.

(4.) The second part of this Article is new and puts upon steamers a measure of duty all too little appreciated or acted upon. Practically speaking a steamer navigating in a fog is bound to stop on hearing the *first* whistle of another steamer if apparently forward of the beam and to remain stopped until the relative positions and courses of the two steamers is reasonably determined.

Illustrations.

The Camrose (1903).

(a) The s.s. *Camrose* whilst on a voyage from Ibrail to Antwerp was in the English Channel between the Royal Sovereign Lightship and Dungeness. There was a dense fog, and the *Camrose* was proceeding on a course E. ½ N. Mag., going at a moderate speed in the circumstances which then prevailed. A long blast followed by two short blasts were heard on the port bow at a good distance off, whereupon the engines of the *Camrose* were stopped and her whistle sounded a prolonged blast in reply. A long blast followed by two short blasts were again heard, and at the same time a tug and tow came in sight between one and two ship's lengths off, about a point on the starboard bow. The engines of the *Camrose* were immediately put full speed astern. The tug was towing the French barque *D'Aumale* to Cherbourg. The whistle of the *Camrose* had been heard fine on the starboard bow of the sailing vessel, but the engines of the tug were not stopped in accordance with Article 16, on the ground that as the tug was proceeding at the minimum speed compatible with keeping the tow under control, it was not the duty of the tug to stop. *Held* by Gorell Barnes, J., that the steamer was not to blame and was not bound to reverse sooner than she did, but that both tug and tow were to blame, as it was practicable for the tug to have stopped her engines and let the way run off the tow.

The Aras (1906).

(b) Those in charge of a steamer (A), proceeding at night at slow speed on account of fog, stopped the engines on hearing the whistle of another steamer (B) about a point and a half on the port bow, a considerable distance away. Whilst A was loosing steerage way and falling off her course the sound of subsequent whistles from B apparently broadened a point. The engines of A were then put dead slow ahead to get steerage way and bring her back to her course, and so continued for some twenty minutes, during which time, although the sound of the whistle was getting closer it was estimated to have broadened so as to be about four points on the port bow. A collision occurred. *Held* by Sir Gorell Barnes that, as in fog the estimated bearing of sound signals cannot be relied on, there was not sufficient ground for assuming that the sound of the whistle was broadening to such an extent as to justify continuing on for twenty minutes without stopping from time to time, and, therefore, there had been a breach of the second part of Article 16.

STEERING AND SAILING RULES.

PRELIMINARY.—Risk of Collision.

Steering Rules for sailing ships.

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change such risk should be deemed to exist.

Article 17.—When two Sailing Vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, viz. :—

(a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled.

(b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.

(d) When both are running free, with the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.

(e) A vessel which has the wind aft shall keep out of the way of the other vessel.

NOTE.—(1.) The old port-helm rule is not under any circumstances applicable to sailing ships. It is now only applicable to the case of two steamers meeting end on, or very nearly end on.

(2.) "It is clear that though a vessel has to keep her course, she is not justified in blindly persisting in that course if it were manifest that disaster must result from it. . . . As soon as it is—or ought, to a master of reasonable skill and prudence, to have been—obvious that to keep his course would involve immediate danger it is no longer the duty of the master to adhere to the article." (Per Lord Herschell, in the *City of Corinth*). Yet much allowance will always be made for a master who adheres to the rules, although the danger might *possibly* be avoided by prompt action. **Reckless persistence.**

Illustration.

Where two sailing ships were approaching each other in the English Channel so as to pass port side to port side, and the ship having the wind on her port side, put her helm down and showed her green light to the other ship at a distance of about a quarter of a mile on her port bow, it was *held* that the port tack ship was solely to blame for a collision which resulted, and that the other ship was not to blame for keeping steadily on her course for an appreciable time after sighting the green light. *The City of Corinth* (1890).

(3.) It is often a matter of considerable difficulty to determine, and more especially at night, whether a ship is close-hauled or has the wind a point or two free. As long as this uncertainty exists, the utmost care, both in the matter of observation and of action, must be employed.

Illustration.

A sailing ship (A) going up channel at night close-hauled on the port tack observed the red light of another ship (B) about one point on her starboard bow. After careful observation of the red light for a time the officer in charge of A came to the conclusion that B was close-hauled on the starboard tack, and accordingly put his helm up. B was in fact running free with the wind on his starboard side, and at about the same time as A altered, B's helm was also put up, and a disastrous collision resulted. *Held*, that though A was technically guilty of a breach of the Rules, yet *since those on board had exercised reasonable care and skill* before acting, they were not to blame for failing to discover that B was not in fact close-hauled. *The Theodore H. Rand* (1887).

(4.) A ship hove-to on the port tack is bound to keep out of the way of a crossing ship on the starboard tack.

(5.) The meaning of the words "running free" is not free from doubt. The build and rig of a ship must be taken into consideration; broadly speaking, however, a ship cannot be deemed to be free unless more than $1\frac{1}{2}$ points off being absolutely close-hauled. If, for instance, a vessel could by possibility sail within five points of the wind, she would in all probability be held to be a "free ship" when sailing seven points from the wind.

(6.) A ship is "close-hauled" within the meaning of this Article, although she could possibly luff as much as a point and yet have all her sails drawing. A ship kept "a good full" is probably close-hauled within the meaning of the rules.

(7.) Under the old Rules a vessel required to keep out of the way might do so in any way she thought proper, but by Article 22, if circumstances permit she must avoid crossing ahead of the other vessel.

The port-helm rule.

Article 18.—Where two steam vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This article only applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective courses, pass clear of each other.

"End on."

The only cases to which it does apply are, when each of the two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each vessel is in such a position as to see both the side lights of the other.

Rule not applicable to crossing steamers.

It does not apply, by day, to cases in which a vessel sees another ahead crossing her own course; or by night, to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

NOTE.—(1.) Vessels proceeding upon practically opposite but converging courses which make with each other an angle of two points or more are crossing vessels and not meeting; but if two vessels are on practically parallel courses end on, or each so little on the port or starboard bow of the other as that both the side-lights of each are open to the other, or the masts of each appear substantially in line, as the case may be, it is the duty of each to port.

(2.) By the Article 46 of the Thames Bye-laws, if two steam ships proceeding in opposite directions, the one up and the other down the river, are approaching one another so as to involve risk of collision, they shall pass one another port side to port side. This rule is of wider application than Art. 18.

Illustrations.

(a) Where an outward bound steamer had the green light of another steamer bound into the River Thames, rather more than a point on the starboard bow, at a distance of about a quarter of a mile, *held*, the duty of both to port their helm, since they were approaching so as to involve risk of collision. *The Odessa* (1882).

(b) In a later case in the Court of Appeal the *Odessa* was much discussed but was substantially approved. In the *Guildhall* it was held that when two steam vessels proceeding in opposite directions the one up the other down the River Thames are approaching each other so that if they maintain their respective parallel courses they will pass starboard to starboard, but so close that any little deviation due to the effect of tide, or passing craft, or other impediment in the narrow waterway, may give rise to a position of danger, there will be "risk of collision" within the meaning of the Thames Bye-laws and both vessels must manœuvre so as to pass port side to port side. *The Guildhall* (1907).

Article 19.—When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other. Rule for crossing steamers.

NOTE.—(1.) A steamer coming up nearly astern of or on the quarter of another steamer may be at once crossing the course of the other, and be overtaking her within the meaning of Article 24. But the overtaking rule prevails, and it is clearly the duty of the overtaking steamer, whether she has the other on her port or starboard side, to keep out of the way of the steamer being overtaken.

(2.) In the case of the *River Derwent* the question as to when a ship shall be deemed to have crossed a river to such an extent as to relieve her of the obligations incumbent upon a crossing ship, was thoroughly thrashed out. Lord Hannen, in delivering judgment, expressed the opinion that, "after a vessel has begun the crossing operation, she must be deemed to be still engaged in the operation of crossing towards the other side until she has obtained a new position up or down the river on either side. In this case the operation consisted not merely in passing across the river in the ordinary way, but in swinging by means of the anchor. That was a part of the operation by which she was crossing towards the other side."

(3.) Though it is the duty of a crossing steamer (A) having another (B) on her starboard side to keep out of the way of B, yet there are duties incumbent on B with reference to A, the non-observance of which would result in a finding of blame in case of collision. A good look-out is, of course, incumbent, and speed must be reduced or taken off altogether when it is clear that a collision must otherwise occur. But the Court will make full allowance for any master put into a position of difficulty by the gross wrong-doing of another. *The Beryl* (1884).

Illustration.

The *Monarch* (113 tons reg.) left Workington for Swansea, and at about midnight whilst on a S.W. course, the masthead and green lights of another steamer, the *Peveril*, were sighted about two miles off and bearing about four points on the port bow. The *Monarch* kept her course and speed (full) until the *Peveril* was about 200 yards distant, and still broad on the port bow, when the *Monarch's* engines were put full speed astern. The stem of the *Monarch* ultimately struck the starboard side of the *Peveril*, with the result that the latter sank. *Held* the *Peveril* to blame, and that the *Monarch* was not to blame for not reversing sooner. *The Peveril* (1899).

(4.) Under the old rules it frequently became a matter of great difficulty to determine to what extent a ship bound to keep her course was to blame in the matter of speed :—

Illustration.

The Crathie (1895).

On the 30th of January, 1895, the ss. *Elbe*, from Bremerhaven to Southampton, whilst on a W.S.W. course in the North Sea, and making about 15 knots an hour, sighted the masthead and green lights of a steamer—the *Crathie*—about one mile distant and about two points on the port bow. The *Elbe* kept her course and speed, and ultimately came into collision with the *Crathie*, the stem of the latter striking the port side of the *Elbe* a little abaft amidships. The *Elbe* sank, and some 340 lives were lost. At a Board of Trade enquiry held at Westminster, *Held* that both ships were to blame—the *Crathie* for a breach of Article 16, and the *Elbe* for not stopping her engines when she saw that the *Crathie* was persistently neglecting to give way by porting her helm. The Dutch Tribunal at Rotterdam, before which the collision action was tried, found the *Crathie* alone to blame, although the same regulations were applicable to the determination of the case as in England. The German Marine Court of Inquiry held that though the *Crathie* was mainly in fault, the *Elbe* should have eased her speed and sounded her whistle when it was seen that the *Crathie* failed to open her red light.

And under this Article 19 the point of time at which and the exact circumstances under which reduction of speed becomes obligatory, is frequently in issue.

Illustrations.

The Roanoke (1908).

(a) The ss. *Windsor*, bound to Rotterdam with grain, was off Dungeness at about 9 p.m. on October 23rd, when under the circumstances detailed below, she came into collision with the ss. *Roanoke* also bound for Rotterdam. Both vessels were looking for a Dutch pilot, and having sighted the same pilot schooner, they were making for it in such a way that, at the material time, they were crossing so as to involve risk of collision. The *Windsor*, which had the *Roanoke* on her own starboard side, should therefore have kept out of the way of that vessel. For failing to do so she was, in the Admiralty Court, found to blame. On the other hand the *Roanoke*, which had admittedly reduced her speed to pick up the pilot, was held also to blame for disobeying the correlative article (21) by not keeping her speed. The Court of Appeal reversed the decision of the Admiralty Court so far as the *Roanoke* was concerned and held the *Windsor* alone to blame on the ground that those on board the *Windsor* knew or ought to have known that the *Roanoke* was engaged in an ordinary nautical manœuvre—the picking up of a pilot—such as would involve a reduction of speed.

The Koning Wilhelm II. (1907).

(b) Two steam vessels approaching one another at a combined speed of twenty knots, on nearly opposite courses were "crossing vessels" within the meaning of Art. 19, and the vessel having the other on her own starboard side, and therefore bound to give way, had just crossed the other's bows, and reached at a very short distance ahead of the other, a position of safety, green to green, when she suddenly ported. Those in charge of the vessel bound to keep her course and speed, seeing the masthead lights of the giving-way vessel, coming into line, stopped and reversed; but her stem struck the port side amidships of the giving-way vessel and sank her. *Held* by the Court of Appeal affirming the decision of the Court below, that the giving-way vessel was alone to blame for improperly porting, and that the other vessel, finding herself in the position indicated by the note to Art. 21, that is, so close that collision could not be avoided by the action of the giving-way vessel alone, had, as soon as the danger became apparent, taken such action as would best aid to avert collision.

(5.) The following dictum occurs in the course of an authoritative judgment by a Court in the United States :—

"If there be any uncertainty as to the intention of the approaching vessel, this of itself calls for the closest watch and the highest degree of diligence on the part of the other vessel in reference to her movements. It behoves those in charge to be prompt in availing themselves of every recourse to avoid not only collision, but the risk of such a catastrophe."

(6.) In winding rivers the crossing rule only applies in the absence of special enactment by local rules, or of any customary track for vessels proceeding up and down the river. Where there are express rules and bye-laws for the navigation of a river, the several obligations (1) to keep on the starboard side of the channel, and pass approaching steamers port side to port side, and (2) for vessels going with the stream to give way to vessels navigating against it, are very generally in force. **Crossing ships in winding rivers.**

(7.) The crossing rule applies to ships crossing the entrance channel to the Cardiff Docks from the eastward and proceeding to Penarth Dock, although, in pursuance of a local rule, special docking lights may be exhibited by the crossing ship.

Illustration.

The ship *Peleus* (1,943 tons), in tow of a powerful tug, arrived off Penarth Head at night, and, being bound for Penarth Dock, two white globe lights were hoisted at the peak halyards as a signal to the dock-master. On getting an answering signal the *Peleus* and her tug, which were then on the Cefn-y-Wrack to the eastward of the entrance channel to Cardiff, proceeded to cross the channel. At this time the ss. *C. W. Anderson* was coming down the channel with her red light open about a quarter of a mile away. Both the steamer and the ship (in tow) substantially kept their courses, both claiming precedence, and ultimately came into collision, the steamer's stem striking the starboard bow of the ship. *Held* the steamer to blame for not acting sooner with her engines, and the ship to blame for attempting to cross the bows of the steamer. *The Charles W. Anderson* (1895).

Article 20.—When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel. **Steamer keeps out of sailing ship's way.**

Note.—(1.) Where there is a probability of a sailing ship being obliged to tack across the course of, or to execute some manœuvre ahead of a steamer, it is the duty of the latter to give the sailing ship ample room, and so provide against any risk of collision.

(2.) Even a steam tug with a heavy ship in tow, and a strong head wind against her, is bound by this Article and has to keep out of the way unless she gives timely warning of the fact of her helpless condition to sailing ships approaching.

(3.) But though the duty to keep out of the way lies on the steamer, those on board the sailing ship are bound to be ready for action in case of necessity. Where *e.g.*, a sailing ship is approaching a steamer in a fog, men should be stationed at the braces and sheets to let them fly and haul the yards round, if necessary, so as to assist the helm in case the steamer comes into view at so short a distance that a collision can be avoided only by prompt action on the part of both vessels. **Ship to be ready in case of emergency.**

(4.) The practice of close shaving has met from time to time with strong reprobation from the judges of the Admiralty Court. If a steamer neglects till a late moment in point of time to take proper precautions to avoid a sailing ship she is approaching, and thereby causes or induces the sailing ship to take a step which contributes to a collision, the steamer will be held at least partly to blame. In a case of collision between a steamship and a sailing ship, it was argued on behalf of the steamer—but unsuccessfully—that the sailing ship ought to have ported on seeing that the steamship was persistently neglecting to keep out of the way. Sir J. Hannen said: "Experience in this Court teaches that steamers very often cut it exceedingly fine. How is a sailing ship to know that a **Close shaving.** *The Highgate* (1890).

steamer is not going to cut it fine, or to know in what particular direction she will move at the last moment? The guide of the steamer's action is the presumption that the sailing vessel will keep her course."

(5.) "It is the duty of a steamer where there is a risk of collision, whatever may be the conduct of the sailing vessel, to do everything in her power that can be done, consistently with her own safety, in order to avoid collision." (Per Westbury, L.C., in the *City of Antwerp.*)

Keeping course and speed.

Article 21.—Where by any of these Rules one of two vessels is to keep out of the way, the other shall keep her course and speed.

Note.—When, in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision. (See Articles 27 and 29).

Note.—(1.) The vessel required to keep out of the way may do so by going ahead (subject to Article 22) or astern, or on either side of the other, and consequently it is the duty of the vessel required to keep her course to do nothing that may possibly interfere with or hamper the vessel bound to keep out of the way.

Illustration.

The Leverington (1886).

The ss. L., proceeding up the starboard side of the entrance channel to the Cardiff Docks sighted another ss. R., coming out of the Roath Basin, about 300 yards distant, and bearing about three points on the L.'s starboard bow. In order to get on her starboard side of the channel, and across the L.'s bows, the R. ported her helm on the wrongful assumption that the L. ought to and would keep out of her way. A collision resulted, although the L. reversed her engines as soon as she saw that the R. was porting. *Held* the R. alone to blame for porting her helm.

(2.) If a ship bound by the rules to keep her course undertakes to justify her departure from the rules, she must show both that her departure was, at the time it took place, necessary in order to avoid immediate danger, and also that the course adopted was reasonably calculated to avoid that danger.

(3.) A vessel which is close-hauled does not break this rule by luffing half or even three-quarters of a point. To do more is probably wrong.

Illustration.

The Ardencaple (1889).

Where two sailing ships were approaching with risk of collision, and the one bound to keep her course luffed something more than a point, and a collision ensued, it was *held* that she had committed a breach of the regulations, and was to blame.

(4.) If a helm movement is made by a vessel under obligation to keep her course, but at such a time that the manœuvre could by no possibility result in risk or danger of collision, there is no infringement of Art. 21.

Illustration.

Where a steamship, with another steamship a quarter of a mile astern on her port quarter overtaking her, ported half a point, it was *held* that no blame attached to the overtaken vessel.

(5). "This rule is perhaps the most difficult of all the regulations for seamen to adhere to. The stringency with which it is applied by the Courts makes it necessary for an officer to take his ship into close proximity to another, where it may appear that risk of collision would be at once determined by directing her course away from the other ship. On the one hand is the law which says that a ship must not keep her course after it becomes manifest that she can, by altering her course, avoid collision; on the other hand is the arbitrary enactment which throws upon her the burden of proving that her alteration of course was made at and not before the necessary moment. To determine that moment is one of the most difficult tasks imposed upon the seaman by the law. To stand on so long as it is possible to do so without immediate and manifest danger seems to be what the Courts require." (Marsden's *Collisions at Sea*, p. 409.)

Article 22.—Every vessel which is directed by these Rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other.

Article 23.—Every steam vessel which is directed by these Rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

Duty to slacken speed or stop.

This Article has displaced the famous *Article* 18.—*Every steamship when approaching another ship, so as to involve risk of collision, shall slacken her speed, or stop and reverse if necessary.*

In each case of collision calling for the application of this Article, a question of fact arises:—When did it become "necessitous" to slacken or stop or reverse? A decision in one case throws little or no light upon another, and although the Article is constantly in issue to give illustrations would serve no useful purpose, but in regard to collisions in foggy weather, some dicta and decisions in cases under the old rules are here set out, and show, in a measure, the broad principles by which the Courts are still governed. The old cases must of course *now* be considered in the light of Article 16.

Art. 23 as applied to steamers in a fog.

NOTE.—(1.) "Those in charge of a steamer in a dense fog should not conjecture anything when they hear a whistle in close proximity. They are bound not to speculate, but to bring their vessel to a standstill in the water at once." (Per Sir R. Phillimore in the *Kirby Hall*.)

Illustrations.

(a) An inward bound steamer, when off the entrance channel to the Mersey in a thick fog, heard a steamer's whistle not far distant on the port bow; she

The Kirby Hall (1883).

did not stop till hearing a second whistle close to on the port bow, the master being under the impression that the first whistle came from a vessel bound inward. *Held* to blame for not stopping immediately on hearing the first whistle.

The Ebor (1886).

(b) Where a steamer going about three knots an hour in a thick fog off Cromer heard a whistle ahead, and apparently about a mile off, and subsequently kept going at the same speed until hearing a second whistle, when the order to stop and reverse was given, she was *held* in fault for not stopping her engines on the first whistle.

(2.) "I think that when a steamer is aware that she is approaching another vessel in a dense fog, she ought to stop, unless there be such indications as to convey to a seaman of reasonable skill that the two vessels are so approaching that they will pass well clear of one another." (Per Lord Herschell in the *Ceto*). "I do not think it signifies whether the whistles get broader on the bow or not if they show that the vessel is coming closer. If it is, and you cannot tell the direction in which it is coming, are not those such circumstances as should lead a prudent officer to suppose that, if he went on as he was, there would be danger? The moment the whistles showed him that a vessel is really coming substantially nearer and nearer to him, he not being able to tell the direction in which she is coming, I have not any doubt he ought to stop." (Per Brett, M.R., in the *Dordogne*.)

Illustrations.

The Lady Eleanor (1895).

(a) The ss. *Iona*, when off the Longstone Light in the North Sea, steering a course S. $\frac{3}{4}$ E., and going about three knots an hour in a dense fog, heard a whistle broad on the starboard bow at a good distance off. Her engines were then stopped, and after a while a second whistle was heard nearer and narrower on the starboard bow, whereupon the engines were reversed. A collision took place, and on the trial it was *held* that the manœuvres of the *Iona* were wholly right.

The Ceto (1890).

(b) Where a steamer going dead slow in a dense fog in the English Channel heard the whistle of another steamer about two points on her port bow, and then ported her helm, and afterwards heard the whistle of the other steamer twice at a bearing of about three and a-half points; *held* the first-named steamer to blame for not stopping and reversing after hearing a second whistle at about the same bearing on the port bow.

The Lancashire (1893).

(c) Two steamers, the *Ariel* and the *Lancashire*, originally proceeding on opposite courses in the English Channel, came into collision during a dense fog. The *Lancashire*, whilst proceeding at the rate of about three and a-half knots an hour, heard the whistle of the *Ariel* about $1\frac{1}{2}$ points on the starboard bow, and the next succeeding whistles showed that the *Ariel* was broadening on the starboard bow, but the *Lancashire* then heard a whistle narrower on the bow, whereupon her engines were stopped. They were not reversed until later on. *Held* in the Court of Appeal and House of Lords, that at the time when the *Lancashire* stopped, the circumstances were such as to make it apparent to a reasonable and prudent master that in order to avoid risk of collision it was necessary to stop *and* reverse.

Overtaking ship keeps out of the way.

Article 24.—Notwithstanding anything contained in these Rules, every vessel, overtaking any other, shall keep out of the way of the overtaken vessel.

Every vessel coming up with another vessel from any direction more than two points abaft her beam, i.e., in such a position, with reference to the vessel which she is overtaking that at night she would be unable to see either of that vessel's

side-lights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these Rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

As by day the overtaking vessel cannot always know with certainty whether she is forward or abaft this direction from the other vessel, she should, if in doubt, assume that she is an overtaking vessel and keep out of the way.

NOTE.—(1.) A sailing ship close-hauled overtaking another going free is bound to keep out of the way of the latter.

(2.) The ship being overtaken must keep her course, but she is bound to slacken or stop, or reverse, if and when the circumstances are such that an officer of ordinary care and skill would come to the conclusion that a continuance of course and speed would inevitably bring about a collision.

(3.) A ship once within the overtaking rule or any other rule requiring her to take or keep a definite course, or requiring her to keep out of the way, cannot by an arbitrary alteration of course or position cause another ship to be brought within the crossing rule in such a manner as to increase or vary the obligation of the latter.

Illustration.

The ss. *Molière*, proceeding at night down the Bristol Channel on a W. course, gradually overhauled the ss. *B.H.*, proceeding on a W. ½ N. course until she had drawn up on the starboard beam of the *B.H.*, when the *Molière* altered her course to W.S.W. at such a time as that she could not safely cross the bows of the *B.H.*, and a collision resulted. *Held*, that the obligation upon the *Molière* as the overtaking ship to keep out of the way continued, although she was within the area of the *B.H.'s* green light. *The Molière* (1893).

Article 25.—In narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such vessel. The narrow channel rule.

NOTE.—(1.) The local regulations for the navigation of certain rivers do not always enforce this rule; it applies on the Clyde, the Tyne and the Tees, but does not apply on the Thames. The only Thames rule at all bearing on this point is :—

Rule 22.—When two steam vessels proceeding in opposite directions, the one up and the other down the river, are approaching one another so as to involve risk of collision, they shall pass one another port side to port side.

(2.) There is often a customary track in rivers for vessels going with the tide, and another for those going against it, and it is often usual for ships to cross from one side of the river to the other, at or about particular places in the different reaches. And ships pursue these courses, although with regard to other ships their position is such that in the open sea the regulations would require them to act differently. If the local **Are the regulations affected by custom?**

regulations have been made with proper authority and are reasonable, having regard to the exigencies of navigation, it may safely be assumed that Courts of Law will act upon the local regulations even though they vary the statutory rules otherwise applicable. Whether this is justifiable in law cannot be answered generally, as each case must be judged on its merits, and the question whether there are local regulations must always be considered.

(3.) Whether or no a particular tract of water is a narrow channel within the meaning of this rule is frequently in issue in collision cases. In the *Cheerful* the entrance to Falmouth Harbour was held to be a "narrow channel," and in the *Rhondda* the Straits of Messina, between Gawzirri and Faro Point on the Sicilian shore, and Pezzo Point and Alta Fuimara on the Calabrian, though in fact the Straits are here about two miles wide. The Golden Gate entrance to San Francisco Harbour and the channel leading to the Inner Harbour at Sydney N.B. have also been held to come within this rule.

Two important cases in which the application of this Article was in issue have recently been determined in the Admiralty Court:—

The Assaye (1905).

(a) On March 20th, 1904, about 1.50 p.m., the *New York*, a twin screw s.s. of 10,799 tons g.r., from New York to Southampton, was proceeding up the Solent heading about E.N.E., and came into collision in hazy weather off Sconce Point with the *Assaye*, a twin screw s.s. of 7,377 tons g.r. The *Assaye* shortly before the collision was on a W. ½ S. course. Both steamers were found to blame in that both were at material times out of their proper water, but that the fault rested on the respective pilots alone. The waterway known as the Solent was held to be a "narrow channel," rendering it obligatory on both ships to keep to that side of the fairway which lay on their starboard side.

The Kaiser Wilhelm der Grosse (1906).

(b) On the 21st November, 1905, in broad daylight the *Kaiser Wilhelm der Grosse*, of 14,349 tons g.r., bound out from Cherbourg to the U.S., came into collision with the *Orinoco*, of 4,571 tons g.r., whilst the *Orinoco* was making for the western entrance to the harbour of Cherbourg. At all material times the German s.s. had the British s.s. on the starboard bow. The western entrance is about half a mile in width, and lies between the ends of two breakwaters approximately east and west. In respect of the navigation the practice would seem to be for a steamship approaching from the north to make for the light on the eastern end of the opposite breakwater, the Fort de l'Ouest, keeping it on the port bow, and by porting, edge off to starboard as she gets near enough for those in charge to distinguish the end of the western breakwater, and then keep well to the starboard side whilst passing through the narrow passage formed by the ends of the two breakwaters. A steam vessel coming out should, if necessary by porting, keep to her starboard side of the narrow passage, passing the incoming vessel port to port. The main charges made by the *Orinoco* in their statement of claim against the defendants were that the *Kaiser Wilhelm der Grosse* when coming out committed a breach of the crossing rule (Art. 19) by failing, when she had the *Orinoco* on her starboard side, to keep out of the way, a breach of Art. 22 by crossing ahead, and a breach of Art. 25 by failing to keep to that side of the west passage which lay on her starboard side. The *Kaiser Wilhelm der Grosse* was *held* alone to blame. Sir Gorell Barnes held, and the Court of Appeal confirmed this decision that the waterway between the ends of the breakwaters, together with so much of the adjacent water as is necessary for the navigation of the passage, must be regarded as a "narrow channel."

(4.) In some rivers and channels, in which rapid currents are met with, there are points at which it is dangerous for ships to pass each other. Where this is the case Article 32 of the Regulations for the Navigation of

the River Danube may be regarded as stating the rule of good seamanship applicable to such cases. That rule is as follows:—

"When a vessel ascending the river (and proceeding against the current finds itself exposed to meeting a vessel descending at a point which does not afford sufficient breadth, she must stop below the passage till the other vessel has cleared it; and if the ascending vessel should be actually in the passage as the other approaches it, the descending vessel must stop above until the passage is clear."

The Diana (1894).

In the case of the *Diana* (1894), before the Privy Council, an appeal from the Consular Court of Constantinople, the construction of Articles 32 and 36 of the Danube Regulations was in question. The facts of the case were shortly as follows:—The ss. *Clieveden* (1,038 net), when at about the 43rd mile post in the narrow Sulina branch, observed the ss. *Diana* ahead over the land, about three miles or more off, and in the broad river. About a mile or more above the 43rd post was a short and very narrow passage at a point where the Sulina cut joins the St. George's Channel. Both steamers kept on, the one up and the other down, each expecting the other to wait, and not enter the narrow pass. A disastrous collision resulted just at the entrance to the Sulina cut. Both ships were held to blame in the Privy Council, the *Diana* for insisting on her right of precedence after the intention of the *Clieveden* was reasonably apparent, and the *Clieveden* for a breach of Article 32.

Lord Watson, in giving judgment, said:—"Neither we nor our assessors entertain any doubt that the short neck of contracted waterway just below the entrance to the Sulina cut did not afford sufficient breadth to permit two vessels of the size of the *Diana* and *Clieveden* to navigate at the same time with safety. But we are not prepared to affirm that the channel below that point, though somewhat contracted, comes within the scope of Article 32. The *Clieveden* would have been justified in proceeding up the north side of that channel if she had stopped short of the narrow neck, leaving sufficient room for the *Diana* to pass her on the south."

Article 26.—Sailing Vessels under way shall keep out of the way of sailing vessels or boats fishing with nets, or lines, or trawls. This Rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fairway used by vessels other than fishing vessels or boats.

Special circumstances.

Article 27.—In obeying and construing these Rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above Rules necessary in order to avoid immediate danger.

Per Bowen, L.J.

NOTE.—*It is no answer when the rules have been infringed to say that a master acted from the best of motives, and according to the best of his ideas: for the law says, not that the master is to do what he believes to be best, but that the regulations are to be obeyed. But unless reasonable force is given to this Article, and to the exception it contains, a captain will have to sail with his eyes open into the jaws of death. If he obeys the rule, let us assume it is certain death for his passengers and crew. He has just one chance: he may, by disobeying the rule, possibly save them. If it is true that that is just the only one chance, then it seems to me it ought to be a case in which a departure from the rule is necessary, otherwise a captain at sea may be trained in the impression that he is better off with his passengers and crew at the bottom of the sea, and the rule obeyed, than in taking the one chance of safety remaining to him. I am of opinion that departure from one*

of the regulations is justified when such departure is the one chance still left of avoiding danger which otherwise is inevitable."

Article 28.—The words "short blast" used in this Article shall mean a blast of about one second's duration.

Signals denoting helm movements.

When vessels are in sight of one another, a steam vessel under way, in taking any course authorised or required by these Rules, shall indicate that course by the following signals on her whistle or siren, viz. :—

One short blast to mean, "I am directing my course to starboard."

Two short blasts to mean, "I am directing my course to port."

Three short blasts to mean, "My engines are going full speed astern."

Note.—(1.) Private signals made by means of a steamer's whistle should under no circumstances be employed at a time when they may conflict in any wise with the signals detailed above, and by such conflict possibly mislead approaching ships.

Illustration.

The Recepta (1889). Where it was proved in a case of collision that a steamer, proceeding up the River Thames, had made, shortly before collision with another steamer, a private signal to the pilot, consisting of one very long blast, followed by one very short blast or "tip," the Court considered that such a signal was an improper one so as to involve blame if it could be shown to have in fact misled another vessel.

(2.) It is most important to observe that these whistle signals are obligatory and not merely optional. This Article has been rigidly construed in the Admiralty Court, and though a steamer's navigation may have been entirely right save for the omission of the appropriate whistle signal blame has attached by reason of this omission alone.

(3.) The obligation to notify by whistle signal any helm manœuvre or reversing of the engines extends to cases in which a steamer bound under the Regulations to keep her course and speed alters her course and reverses her engines very shortly before and solely with a view to avoiding a collision. But special circumstances may vary a steamer's obligations to sound a three blast signal.

Illustration.

The Bellanoch (1907). Just before sunrise, but in daylight, and in the shallow water of Monte Video Roads, two steamships were, at the material time, crossing vessels within the meaning of Art. 19. A was pursuing a southerly course at about three knots, and had B on her starboard bow at about right angles. A ported to pass under the stern of B, but struck her on the port quarter, and was held to blame for not taking sufficient or timely steps to avoid collision. B being of deeper draught than A was slowly dragging through the mud on an easterly course at about one mile per hour, and to assist in her progress, she was, from time to time putting her engines full speed astern, the last occasion being a very few minutes prior to the collision. *Held* by Lord Alverstone, C.J., and Kennedy, L.J., affirming the decision of Sir Gorell Barnes, that B was free from blame, as she was not bound to exhibit two red lights under Art. 4 or 11, being neither "not under

command" nor "aground" within the meaning of those articles, nor was she under any obligation to give the three short blast signals on putting her engines full speed astern, as she was so manœuvring with her engines, from time to time, in the ordinary course of navigation to enable her to go ahead as fast as the condition of the mud would permit.

Good seamanship always required.

Article 29.—Nothing in these Rules shall exonerate any vessel, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

NOTE.—(1.) All that the law requires of an officer is ordinary care, skill and intelligence, and the question which the judge of the Admiralty Court often puts to the Trinity Masters who assist him is, whether a master of reasonable care and skill would have done the act complained of under the special circumstances of the case. Proof, however, of even a slight or trivial breach of one of the Regulations generally involves a finding of blame, unless it can be clearly shown that such apparent breach was either necessary to avert collision or could not by any possibility have contributed to the collision.

(2.) In proportion to the necessity, the greater is the measure of care and vigilance demanded. So the denser the fog, the more keen must be the look-out; and the more exposed the roadstead and the more serious the warnings, the closer must be the attention to a ship's moorings.

Bad look-out.

(3.) Whether or not a vessel is to blame in a case of collision for having a bad look-out involves a careful consideration of all the facts. The absence of a look-out is not a statutory offence: hence the party alleging a bad look-out on the part of another must show that the alleged bad look-out in fact contributed to the collision.

Illustrations.

(a) A tug which, with a lighter in tow, was crossing the Humber under a slightly starboard helm on account of the ebb tide, starboarded further, and gave a long blast signal to indicate her presence to a steamship under the stern of which she was passing. The steamship, which was showing a stern light and lying athwart the river waiting to go into dock, came astern to allow another vessel to pass out of dock, and the tug thereupon hard-a-starboarded her helm to clear the stern of the steamship, but failed to give the appropriate two short blast signal. The steamship had no look-out aft, and, in the Admiralty Court, was found alone to blame for a collision with the lighter, whilst the tug was absolved from liability on the ground that the infringement of the rule could not by possibility have contributed to the collision. *Held* by the Court of Appeal that the tug was also to blame for though those in charge of the steamship were so negligent as not to notice what was going on astern of them, it could not be said that, if the two short blast signal had been given by the tug when further starboarding or hard-a-starboarding, the signal might not have been heard and acted upon by those in charge of the steamship in time to have avoided the collision with the lighter. *The Aristocrat* (1907).

(b) A steamship coming down the river Thames at night struck and sank a laden dumb barge, which was swinging to the ebb tide athwart the fairway and held only by her headfast to another barge which was lying alongside a steamship moored at Greenwich tier. There was no one on the deck of the barge attending to her before or at the time of the collision. *Held* that the barge was alone to blame since the owners ought to have had a man in charge ready at the turn of the tide to show a light to approaching vessels; and that the absence of any warning signal was in the circumstances a breach of the Thames bye-laws. *The St. Aubin* (1906).

The Karo (1887).

(c) At about 5 p.m. on a January evening in 1887, an order to take in the fore-topsail was given by the officer on the bridge of a steamer bound south in the North Sea; the look-out man thereupon left the forecastle head, went aloft with the rest of the watch, and, after being engaged there some few minutes, took a glance round. He then saw the green light of a steamer broad, but close to, on the port bow of his ship. He reported the light, and immediate action was taken by reversing the engines; a collision resulted, with an aggregate cost to underwriters of about 40,000*l.*

The Claymore (1890).

(d) The chief officer of a steamer, whilst in mid-Atlantic, sighted the side-light of a sailing ship a little on the bow, and shortly after doing so left the bridge and went into the chart room. In his absence from the deck the only look-out of any kind being kept was by a Japanese at the wheel. A collision occurred, resulting in the total loss of the steamer and the abandonment of the sailing ship.

It is hardly necessary to point out that a bad look-out is a prolific source of casualty, probably one half of all preventible sea casualties have their origin in a careless or defective look-out.

(4.) Circumstances under which a ship may properly attempt to cross a navigable river or a line of traffic are often in issue. Whether there is time and opportunity to cross without causing obstruction to other vessels has to be carefully considered. The vessel crossing undoubtedly takes upon herself the responsibility of being able to do so safely with reference to the passing traffic, that is, those in charge of her are put to their election whether they will cross and call upon a passing vessel to take the ordinary precautions to avoid collision, or whether they will stop where they are and allow that other vessel to pass, in either case not hampering or misleading the other vessel, but clearly and unmistakably indicating to that other vessel the course which they intend to pursue.

(5.) Here are a few typical cases of neglect of ordinary precautions not enjoined by any Article, but depending for their sanction on the ordinary practice of skilled seamen.

Anchors not ready to let go.

(a) A steamer moored at the buoys in the River Tyne broke adrift in a heavy gale and did much damage to the shipping. It was admitted that her cable chains were not bent to her anchors, and nothing was done in this direction when the weather became threatening. *Held* to blame for want of reasonable care and caution.

Foul berth.

(b) Where a ship, after running into a roadstead for shelter, came to an anchor so near to another that on the succeeding tide, by the extraordinary action of wind and current combined, the two ships came together, and there was no evidence that either in fact dragged her anchors, it was *held* that the ship coming to an anchor last must be held to blame for giving the first a foul berth.

Accident to steering gear.

(c) Where a steamer proceeding up the River Thames had to port her helm to avoid another steamer, but was prevented from executing that manœuvre by the steering apparatus being suddenly thrown out of gear, and it appeared that an overhaul of the machinery had been unduly delayed, it was *held* that the owners were liable for the consequences of a collision which followed immediately on the accident.

Not waiting below point.

(d) Where by the practice of navigation in any particular river it is the duty of a ship navigating against the tide to wait until a vessel coming in the opposite direction has cleared her at the bend, it will generally be *held* that the ship disregarding the practice is to blame for the collision.

Speed on entering a fog.

(e) Where the master of a steamer sights a fog bank ahead, or sees a thick drift of mist about to cover him, the whistle should be sounded and the speed moderated before the steamer enters the mist or fog. A master delaying to reduce speed till in the fog will almost certainly be held in fault.

Illustration.

The steam tug *N. Strong* when off the Longships, steering about S.W. by S., and making from eight to nine knots an hour, sighted a bank of fog ahead, but did not reduce her speed or sound her whistle before entering it. Immediately after entering it the barque *Eulie* (making about four knots an hour) was sighted about 100 yards distant, and a collision resulted. *Held* the steam tug alone to blame. *The N. Strong* (1892).

(6.) It cannot be laid down as a hard and fast rule of navigation where two steamships are approaching one another in a fog, so as to involve risk of collision, that neither ship ought to alter her helm until their relative positions are determined with accuracy; but it was said by Lord Herschell, in the *Vindomara*, that where two vessels are approaching one another in a fog without any sufficient indication of their several directions, both vessels should undoubtedly keep on their course. Each case must depend on its own circumstances; and it is obvious that an alteration of the helm on hearing a whistle anywhere ahead in a fog is quite as much calculated to induce as to reduce risk of collision.

(7.) "There is a rule governing all others—that officers must not do that which is unreasonable—that is to say, that which is unskilful and negligent, and which, if they are either unskilful or negligent, will put in jeopardy the lives and property entrusted to them. And they have a still further duty. They must not do anything either through want of skill or through negligence, and they must not avoid doing anything which skill and care would oblige a man of ordinary care and skill to do, when the doing of the thing, or the omitting to do it, will put in danger the lives and property of other people not under their command, but who are in near proximity to them." The reasonableness of a master's conduct is incessantly being called in question, and not infrequently his duty relatively to different interests after a collision has happened.

Illustrations.

(a) A collision took place off Cape Spathi, Island of Ceringo, between the steamships *Berenice* and *Morglay*, the *Berenice* being injured to such a considerable extent that the master thought fit to beach her, whereby much further injury was caused. The question whether the master was justified in beaching his ship went through all the Courts to the House of Lords. Lord Herschell, in the course of giving judgment said:—"The *Berenice* had on board beside her cargo, 72 passengers. The master was therefore bound to consider the steps that were necessary to secure as far as possible, and humanely speaking, the lives of the passengers and crew in the first instance. I desire to express my opinion that that was, properly speaking, the first consideration of the master, and the question what damage would be caused to the vessel was of importance comparatively less than securing the lives of the passengers. Even if we concede that by taking a particular course, he might the better save the vessel and cargo, yet that the taking of that course involved greater risk to life on board, it appears to me it was the bounden duty of the master of such a vessel to give the lives of his passengers the foremost consideration, and to adopt a course which would afford to those lives the greatest security." In the result the master was held to have been justified in the course of action he adopted. *The Morglay* (1893).

(b) A steamship going down the river Elbe, and seeing the three lights of a steam-tug ahead or a little on her port bow, ported to give more room, thereby bringing herself well over to her proper starboard side of the channel; but the tug starboarded and got on the starboard bow, whereupon the steamship slightly starboarded and steadied, bringing the vessels green to green at half to three-quarters of a mile and about a point and a half on the starboard bow. The tug then ported back and whilst crossing the bows of the steamship, was sunk in collision. The tug was found alone to blame for wrongful manœuvres without helm signals. *Held* by the Court of Appeal that the steamship was also to blame, *The City of Berlin* (1907).

for when those in charge saw that, though they had starboarded and steadied, the green light of the tug did not broaden, but was, for an appreciable time, getting finer on their starboard bow, they ought to have realised that there was "risk of collision," and they should, therefore, as a matter of seamanship, have at once stopped and reversed.

Rules of local authorities.

Article 30.—Nothing in these Rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland waters.

Note.—Special rules prevail in most of the larger navigable rivers in the U.K., but reference to certain of them on the question of speed alone can be made:—

Thames.

(a) "All vessels entering or being overtaken by a fog shall be navigated with the greatest caution, and at a very moderate speed."

"Steam vessels navigating the river between Barking Creek and London Bridge, other than river passenger steamers, certified to carry passengers in smooth water only, shall never exceed a speed of seven statute miles per hour over the ground, whether with or against the tide."

Clyde.

(b) "A steam vessel meeting or overtaking any sailing vessel or tug with sailing vessel in tow shall slow her engines when within 50 yards of such vessels, and shall continue slowing until she shall have passed the same: and when about to pass any vessel aground or at anchor shall slow her engines at least 150 yards from such vessel, and so continue until she shall have passed the same."

No greater speed than dead slow is allowed to steam vessels in certain of the more difficult points in the river.

Tees.

(c) "No steam vessel shall at any time be navigated in any part of the river at a higher rate of speed than a maximum rate of seven statute miles per hour over the ground."

"Whenever there is a fog, no steam vessel shall be navigated in any part of the river at a higher rate of speed than three miles per hour."

"Every steam vessel when approaching another vessel on an opposite course or from an opposite direction shall before approaching within 100 yards slacken her speed."

"No steam vessel shall go more than six statute miles an hour over the ground in that part of the River Tees between the Commissioners' Graving Dock and Bamlett's Bight; nor at a greater speed than five statute miles per hour over the ground between Bamlett's Bight and Stockton Bridge."

Tyne.

(d) "Sea-going steam vessels shall not be navigated in the part above the Low Lighthouse at a greater speed over the ground than six knots or seven statute miles per hour, whether going with or against the tide."

"Every vessel under way, when overtaken by a fog, shall be navigated at a very moderate speed, and shall, as soon as practicable, be moored or anchored out of the navigable channel. Vessels shall not, without the permission of the harbour master, be got under way during a fog."

Signals for ships in distress.

Article 31.—When a vessel is in distress and requires assistance from other vessels or from the shore, the following shall be the signals to be used or displayed by her, either together or separately; viz.:—

In the daytime—1. A gun or other explosive signal fired at intervals of about a minute.

2. The international Code Signal of distress indicated by N.C.

3. The distant signal, consisting of a square flag, having either above or below it a ball or anything resembling a ball.

4. A continuous sounding with any fog-signal apparatus.

At night—1. A gun or other explosive signal fired at intervals of about a minute.

2. Flames on the vessel (as from a burning tar-barrel, oil-barrel, &c.).

3. Rockets or shells, throwing stars of any colour or description, fired one at a time, at short intervals.

4. A continuous sounding with any fog-signal apparatus.

Chapter XII.

SALVAGE: TOWAGE: PILOTAGE.

(1.)—Salvage.

To constitute a case of salvage some description of maritime property must be saved from an impending peril of the sea by voluntary effort on the part of salvors.

The considerations to which the Court of Admiralty gives most weight in the determination of what is a fair and reasonable reward for salvage services are :—

Facts determining amount of an award.

(1.) The aggregate value of the property saved.

(2.) The nature and degree of the risk to which human life $^{\text{and}}_{\text{or}}$ the property saved was exposed.

(3.) The nature and degree of the risk run by the salvors $^{\text{and}}_{\text{or}}$ their property in effecting the salvage services.

(4.) The value of the salvors' property engaged in the services.

(5.) The length of time occupied in and about the salvage services, and the actual pecuniary loss to the salvors.

(6.) The necessity for encouraging salvage enterprise by giving liberal awards.

No fixed scale of awards.

The amount of remuneration for salvage services must necessarily depend upon *all* the circumstances of each particular case. Awards do not vary directly or even approximately with the total values at risk, and it is very rarely the case that the Court will award more than £10,000, though the values may run very high, and the risk to the property saved be very great.

Illustrations.

The Werra (1886).

(a) Whilst the ss. *Werra* (5,109 tons gross) was on a voyage from Bremen to New York with 544 passengers and 175 hands on board, her machinery broke down, but she was still fairly manageable under sail. The ss. *Venetian* towed her safely into port, a distance of 1,000 miles, in seven days, the weather being moderately heavy at times. The total value of the *Werra*, her cargo and other property on board, was about 240,000*l.* The Court awarded 7,000*l.*, and apportioned the amount as follows:—5,250*l.* to owners, 583*l.* to master, 1,167*l.* to the rest of the crew.

The Bremen (1906).

(b) The ss. *Lucigen*, of 4,526 g.r., whilst on a voyage from the Tyne to Philadelphia in water ballast, fell in with the twin screw ss. *Bremen*, about 94 miles south of Cape Sable. The *Bremen* was on a voyage from New York to Bremen with general cargo, 160 passengers and 263 hands in crew. On the previous day the port propellor shaft had broken, and the propellor in slipping

aft had damaged and disabled the starboard propellor. Towing hawsers with a total scope of 280 fathoms were adjusted and a course set for Halifax; there was much fog during the voyage, which lasted three days. The *Bremen* was towed 280 miles. The *Lucigen's* value was 68,000*l.*; the total value at stake on the *Bremen*, her cargo and freight, was 239,504*l.* The Court, whilst finding that the *Bremen* was drifting towards the land, held that she could in all probability have got other steam assistance, and came to the conclusion that 5000*l.* was a sufficient award—3,500*l.* to owners, 500*l.* to the captain and 1,000*l.* to the crew according to their rating.

(c) At about 8 p.m. on the 23rd June, 1910, the ss. *Lowther Range* (3792 tons g.r.), whilst on a voyage to Bombay fell in with the ss. *Trieste* in Lat. 15° 54′ N. and Long. 61° 39′ E. There was a very heavy sea running the S.W. monsoon then prevailing. It appears that the *Trieste* had on the 15th of June left Aden with 25 first-class passengers, 62 third-class passengers, and 69 in crew, bound for Bombay, and on the 16th when about 480 miles from Aden the tail end shaft broke in the stern bush. Between the 15th June and the 23rd the *Trieste* drove before the monsoon and made a total distance of about 700 miles in the 8 days, all sail being set that was possible. The *Lowther Range* stood by during the night of the 23rd and on the 24th the port lifeboat was lowered but was stove in almost immediately by the seas. Repeated attempts were made to connect the two steamers during the 24th, 25th, 26th, 27th and 28th June, but on one occasion only was a steel wire passed and that parted within a few minutes. On the 25th tarpaulins were washed off the No. 3 hatch of the *Lowther Range*, and on the 26th the No. 4 winch steam pipe broke and whilst attempting to manœuvre ahead of the *Trieste* a heavy sea broke on board the *Lowther Range* injuring a number of the men and killing the second engineer. On the 29th after repeated failures to connect the steamers a 5-inch steel wire was passed and made fast to three pairs of bitts on the *Lowther Range*, the *Trieste* slacking out about 75 fathoms of chain. A course of E. by N. ¾ N. was shaped and the towage proceeded until the 1st July when the wire parted. There was still a strong gale and heavy sea. On the evening of the 1st the *Trieste* anchored off Prong Point and on the 3rd the *Trieste* was towed into Bombay by the tug *Dewan*, the towage in all covering about 300 miles. The values of the *Trieste*, her cargo and freight, were about £90,000. The actual loss to the owners of the *Lowther Range* by reason of the services amounted to something over £2,000. The matter was referred to the sole arbitration of Mr. Butler Aspinall, K.C., who awarded an aggregate amount of £10,500 salvage. Of this amount £7,250 was apportioned to the owners; £1,000 to the master; £2,250 to the officers, doctor, and crew. For the purposes of the award the chief officer was rated the same as the chief engineer and the 2nd officer the same as the 2nd engineer.

The Trieste. (1910.)

It very seldom happens that more than one-half the value of the property saved is awarded to salvors; but there is no fixed limit, the question of amount being one entirely for the Court. In the case of a derelict two-thirds of the values salved is practically the maximum of recovery in the way of salvage*. Among the very few

* In the case of *The Boiler* ex *Elephant* (1891), a derelict marine boiler, part of the cargo of a vessel which had foundered at sea, realised on sale 58*l.* 3*s.* 4*d.* No one appeared to defend the action in rem brought by the salvors, who were awarded £50 and costs. In the case of *The Arthur* (1901), a dismasted schooner of 102 tons with a cargo of timber, was towed derelict out of the North Sea into an English port by two steam trawlers. At the hearing the owners of the schooner did not appear; the net proceeds of the vessel after sale by the court were 146*l.* 6*s.* 1*d.*, and of the cargo 1,077*l.* 13*s.* 4*d.* From these sums the Court deducted the expenses paid by the salvors, which reduced the amounts to 109*l.* 8*s.* 2*d.* and 836*l.* 15*s.* 10*d.*, making together 946*l.* 4*s.* 0*d.*, and out of this sum awarded the two salvors 600*l.*

cases reported in which more than two-thirds the value of the property saved has been awarded, the following are given by way of—

Illustrations.

The Erato (1888). (a) A steamship laden with wheat having stranded in the Red Sea about 60 miles to the north and west of Perim, three small steamers from Aden went to the place, and were engaged in salvage operations for about a fortnight. One of them, whilst towing, struck the rock, and shortly afterwards sank, entailing a loss of about 5,000*l.* The total value of the property saved was 3,750*l.* The Court, taking into consideraton the serious loss sustained by the owners of the salving steamer, awarded in all 2,000*l.*

The Louisa (1906). (b) A derelict barque, dismasted and on fire, was towed by a tug some twenty miles into Harwich, where the salvors succeeded in extinguishing the fire and placing the barque in safety. The vessel and her cargo were ultimately sold by the Court, realising 225*l.*, less 108*l.*, expenses of the marshal. There was also a liability of 88*l.* for the assistance rendered to the salvors by others after the vessel was brought in, and a further liability of 21*l.* 17*s.* 9d. for dock dues, reducing the net balance to 37*l.* 2*s.* 3*d.* In an action against the owners of the barque, her cargo and freight, the Court awarded the salvors the total proceeds without a reference.

Salvage agreements.

An agreement for salvage remuneration (*a*) entered into by the master of a ship in a position of peril is *prima facie* binding upon the owners, but such an agreement will be set aside by the Court if it has any element of fraud in it or if the terms are grossly unfair to the owners of the salved property, or if the salvors were in ignorance of material facts affecting the safety of the property saved.

"I think that what is at the root of the question is this—where it is found that a wholly unreasonable price has been insisted upon by the salvors, and an agreement incorporating it has been signed, the Court looks rather to the position of the parties than to the reasonableness or unreasonableness of the amount. Were the parties, in fact, contracting on equal terms?" (Per Butt, J.)

Illustrations.

The Mark Lane (1890). (a) The ss. *Mark Lane*, on a voyage from New Orleans to Belfast, when about 350 miles from Halifax (N.S.), lost two blades of her propellor and the use of her engines. The ss. *Crete* came up shortly after and offered to tow the

(*a*) "Where agreements are made at sea between salvors and masters of vessels the Court will always be very desirous to confirm them, if it can do so consistently with equity and justice. The Court would be very reluctant, under ordinary circumstances, to disturb an agreement made between parties on account of the sum appearing too large or too small, but there are cases in which I should not hesitate for a single moment to pronounce against an agreement either on the one ground or the other." (Per Lushington, J. in *The Henry*).

Mark Lane into Halifax for 5,000*l.*, refusing to undertake the work for less, and further stipulated that in any event services rendered, though unsuccessful, should be paid for. The total value of the *Mark Lane* and property on board was about 23,000*l.* *Held*, that the agreement being made under compulsion, and exorbitant, must be set aside. 3,000*l.* was awarded.

(b) The *Crusader*, a steamship of 4210 tons g.r., laden with sugar from Java to Port Said for orders, was coaled at Colombo by a firm who acted in the usual way as ship's agents. A few days afterwards the vessel grounded on Gofar Island in the Maldives and remained fast. Her master sent the chief officer back to Colombo with a letter to the agents acquainting them with the situation, telling them he wanted a powerful tug, asking them to give the chief officer every assistance, and to draw on the defendants, the owners of the ship, for disbursements. He also suggested that a contract for a salvage boat, "No cure, no pay," might be advisable. The plaintiffs, being of opinion that no satisfactory arrangement of the latter kind could be made, engaged a Government tug at a rate working out at about 60*l.* a day, and, making themselves personally liable for the payment of the hire, insured the tug for a limited period. The tug proceeded to the vessel with a representative of the agents on board. The master, doubting whether his vessel could be got off, declined to accept the services of the tug except on a "No cure, no pay" agreement, and accordingly, after some discussion with the plaintiffs' representative as to terms, the master signed a letter agreeing on behalf of the defendants to pay the plaintiffs 4,000*l.* if the vessel was successfully floated. The tug then made fast, and, in the course of the next day's towage, the vessel came off. *Held* by Sir Gorell Barnes, that the agreement could not be given effect to consistently with the equitable principles guiding the Court in salvage cases, that is to say, the claimants could not, in the circumstances, be allowed to ratify the act of their representatives, as they were not salvors at all, but in engaging the tug had acted as agents of the ship, and as such they were only entitled to recover by personal action repayment of their disbursements, together with the usual agency charges.

The Crusader (1906).

(c) In another case, Butt, J., said: "I quite agree that the 1,000*l.* agreed upon is a great deal more than I myself should have thought of giving for the services rendered if there had been no agreement; but I am not prepared to say that this amount is so wholly exorbitant as to induce me to set the agreement aside. I think, however, the screw was put on to the captain in a way it should not have been, so shall make no order as to costs."

The Sir Garnet Wolseley (1891).

Salvage agreement superseded.

"In case of a salvage agreement, if by reason of circumstances, over which the salvors had no control, the difficulty of the service was so far increased as to make it, in fact, a wholly different service from that which was originally contemplated by the parties, or a service of a wholly different class, then the Court of Admiralty has a right to deal with the case as if the original agreement had not been made, and to make such an award as under the circumstances it may think right." (Per Lord Esher in the *Westbourne.*)

Illustration.

A steamer (A) fell in with another steamer (B) about 260 miles from Gibraltar, and 60 from Carthagena. B had lost her propellor and was helpless, but the weather was moderate. An agreement was entered into by which A was to tow B into Gibraltar for 600*l.* Shortly after the towage began very bad weather set in, with excessively strong head winds. In consequence of this B was towed into Carthagena, the nearest port. *Held*, that the contract was at an end as soon as a change of destination became necessary, and that an award of 900*l.* was a reasonable one under the circumstances.

The Westbourne (1889).

Where there is an undertaking to perform a salvage service, there is a corresponding obligation to exercise ordinary skill and use reasonable care in and about the rendering of such service. Culpable negligence, apart from any wilful misconduct, will generally be visited with a denial on the part of the Courts of any right of salvors to receive remuneration for their services.

Illustrations.

The Yan-Yean (1884).

(a) The *Yan-Yean* being in distress in the Bristol Channel secured the assistance of the ss. *Kirkstall*, the crew of the former going on board the K. Afterwards the mate and two men from the K went to the Y, but refused to take with them the master of the Y, or to take the assistance of a steam tug. From want of local knowledge the salvage crew anchored the Y in an unsafe position, where she began to drift, and subsequently foundered, but was raised again by her owners at considerable expense. A salvage action was instituted on behalf of the K, Sir J. Hannen finding there had been misconduct on the part of the mate of the K, and that the loss arising therefrom was roughly considered the equivalent of any monetary gain to the owners of the Y by reason of the original services, *held* no salvage award to be due. A counterclaim by the owners of the Y for damages was however dismissed.

The Ciudad de Reus (1895).

(b) The ss. *Dunbeth*, whilst on a voyage from the East Indies to Philadelphia, laden with a cargo of sugar, broke down about 170 miles N.E. of the Bermudas. All sail was set in the endeavour to reach the Bermudas without assistance, but the ss. *Ciudad de Reus* coming up on the following day, her services were engaged. Whilst the *Ciudad de Reus* was manœuvring with a view to passing a wire hawser, she attempted to cross the bows of the *Dunbeth* without making any allowance for the rate at which the latter was forging ahead. A serious collision resulted, the *Dunbeth's* damage being about 6,000*l.*, and the *Ciudad de Reus's* damage about 3,000*l.* After the collision the latter steamed away, and left the *Dunbeth* to reach port as best she could. The only salvage services consisted in standing by for about twelve hours, and in turning the *Dunbeth* round from N.E. to S.W., heading for Bermuda, which place the *Dunbeth* ultimately reached under her own sail. Actions were brought by the *Dunbeth* to recover damages for the collision, and by the *Ciudad de Reus* to recover salvage. *Held* (by Bruce, J.) the *Dunbeth* entitled to recover her collision damage in full, but there being no actual misconduct on the part of the *Ciudad de Reus* in leaving the *Dunbeth*, that she was entitled to recover salvage, 1,500*l.* was awarded.

Where a tug owner has undertaken for performance of a towage contract and fails to carry out the contract the onus is upon the tug owner to show that the failure was not due to any inefficiency on the part of the tug herself and that there was no inefficiency or want of care or skill on the part of her master and crew. If the tug owner fails to account for any accident or casualty or failure to carry out the contract by *vis major* or any outside cause then the *prima facie* inference of inefficiency or neglect

renders him responsible, and any claim for salvage for services performed by the tug as a result of the accident or casualty would be negatived.

Illustration.

The Marechal Suchet (1910).

On February 16th, 1910, the tug *Guiana* was engaged to tow the French three-masted, full rigged ship *Marechal Suchet* of 1901 tons from Falmouth to London for the sum of 80*l.* The towage began the same morning and on the evening of the following day a pilot was taken aboard. On the morning of the 18th at about 1.50 a.m. the tug and tow were in the Prince's Channel and by reason of a fairly strong S.W. wind were sagging away to leeward and making very little headway up the river. At 6 a.m. the *Marechal Suchet* took the ground and in a very short time seven tugs and two lifeboats were at work over the salvage which lasted three days and had a successful result. The total values of the *Marechal Suchet*, her cargo and freight were agreed at £9,458. An action was raised in the Admiralty Court by Watkins & Co., owners of the *Guiana*, *Columbia*, *Vincia and Badia* for recovery of salvage and the President in giving judgment *held* that the *Guiana* having failed to displace the presumption of inefficiency and/or negligence on her part was not entitled to any salvage in respect of services rendered subsequent to the stranding, and further that the *Columbia*, *Vincia* and *Badia* being owned by the same people as the *Guiana* were likewise disentitled to any salvage, but the masters and crews of the other three tugs received respectively 55*l.*, 20*l.* and 35*l.*

Where risk not lessened.

It sometimes happens that the property in danger is ultimately left by would-be salvors in a worse position than it was at the beginning of operations. Generally speaking, this fact bars any claim to reward, though circumstances may vary the general rule, *e.g.*, in case of agreement to pay for work done and not conditioned upon any given result.

Illustration.

The Benlarig (1888).

Where in an action of salvage it appeared that an agreement had been entered into on the part of salvors to attempt and do their best to tow a disabled vessel into Gibraltar; but after towing the vessel 150 miles towards Gibraltar the hawsers parted, and she was left in a more dangerous position than when the towing began, it was *held* that the plaintiffs were not entitled to salvage reward, but were entitled to payment of 400*l.* for what they had done in attempted fulfilment of their contract.

The Renpor (1883).

No reward for life salvage can be recovered unless there has been something saved other than life—something which may form the nucleus of a fund from which salvage may be paid; but where there is such a fund, the fact that danger to life has been averted is a most important ingredient.

Illustration.

The Suevic (1907).

On March 17th, 1907, about 10.30 p.m., the weather being foggy with rain, with a strong breeze from the W.S.W. and a heavy swell, the steel twin-screw steamship *Suevic* (12,500 tons g.r.) and manned by a crew of 142 hands all told,

struck on the rocks a little south-west of the Lizard. The tide was running ebb in shore and the ship lay on the rocks heading about E. by N. with her forepart aground and 370 feet aft of that afloat in ten fathoms of water. The *Suevic* was on a voyage from Australia to London with a full general cargo and 382 passengers. The total value of the ship and cargo was 265,000*l.* Four tugs put out from Falmouth .to render assistance. Owing to the fog prevailing, the strong wind and heavy ground swell, and the rocky nature of the coast the tugs were unable to approach close to her; but at the request of the local lifeboats, which had already reached the vessel with the object of saving life, they took these boats in tow, and so enabled them, in the course of several trips, to land in safety the whole of the passengers and crew. Part of the vessel and part of her cargo were subsequently salved by other salvors. *Held* (by Bucknill, J.) that the owners, masters and crews of the tugs were entitled to an award of 800*l.*

Apportionment of salvage.

A salvage award is generally apportioned by giving three-fourths to owners and one-fourth to master and crew. When the services have been such as to call for great skill on the part of the master, or great personal exertion or hazard on the part of the crew, it is not unusual for the Court to give the owners two-thirds only, one-third going to master and crew. Exceptional services by individual officers or members of the crew are specially rewarded.

Instance of Apportionment—

The Lake Huron (1895).

The ss. *Lake Huron* (4,040 tons g.r.; engines, 500 h.p.; crew, 59 hands), whilst on a voyage from Montreal to Liverpool with a perishable cargo, fell in with the ss. *Spree* with her screw shaft broken and towed her about 700 miles into Queenstown. The total value of the *Lake Huron*, her cargo and freight, was 94,000*l.* The *Spree* was a steamer of 6,963 tons gross register, built 1890, and at the time of her breakdown was on a voyage from Bremen to New York with general cargo, mails, and 500 passengers on board. The *Spree* was making a great deal of water, and drew aft about 33 feet, whilst her forefoot was almost out of the water. By agreement between the parties, the owners of the *Spree* and the other interests involved paid the owners of the *Lake Huron* 12,000*l.* This amount was apportioned by the Admiralty Court as follows—9,200*l.* to the owners, 2,800 to the master and crew, of which the master received 800*l.*, and the remaining 2,000*l.* was distributed amongst the officers and crew according to their rating, the eleven stewards, cooks and boys receiving each one-half share in accordance with their ratings.

In the *Coriolanus*, Barnes, J., held that "persons not on the articles, who may not be called upon to do any duties, and in fact perform no duties in a salvage service, and do nothing of any benefit to the property salved, are not salvors." The question in that case was whether cattlemen were entitled to share in an award, and it was held that they were not.

Considerations which would appear to deserve special attention when a master has to decide whether to undertake a salvage of property are :— **Should a salvage be attempted.**

(1.) Any specific instructions he may have had from his owners with reference to salvage.

(2.) The terms (if any) of his C/P and Bs/L with regard to towing and deviating. Cancelling dates, so far as any may be within the knowledge of a master, ought to be seriously considered.

(3.) The quantity of bunker coal remaining, and the nature of the cargo laden on the ship.

(4.) The power and condition of his engines and machinery.

(5.) The probable value of the property in danger, and whether enough or not to yield an ample award.

Remuneration by way of salvage has been given in the following cases—(1) Where mere advice was given to a master who was proceeding up the Bristol Channel in considerable uncertainty as to his true position. (2) For the use of a floating fire engine in extinguishing a fire on board ship. (3) For the supply of an anchor and chain to a vessel which had been compelled to slip her own in boisterous weather. (4) For carrying ashore a request for help from a vessel in distress. (5) For merely lying by another vessel in a position of danger.

"If the master of a ship in distress requests the performance of a service of a salvage nature—requests, for example, a steamer to stand by her in a storm, or to fetch an anchor from the shore—and that service is rendered, but the ship for which the service is requested is eventually saved through some other cause, such as a fortunate change of weather: or, if after the service has begun, and whilst they are willing and able to complete it, those who have undertaken it are discharged by the master of the vessel in danger, who prefers, perchance, some other help which offers itself; the Court will not suffer the act of assistance, although unproductive of benefit, to go unrewarded if it has involved an expenditure of time, labour or risk; and the Court may include in its award some compensation for the loss which the claimants of salvage have sustained in being prevented from completing the service which they had agreed to render." (Kennedy's *Law of Civil Salvage.*)

The following are cited as being fairly typical of the general trend of awards in salvage cases **Typical cases.**

where values are considerable and the services are substantial:—

The Manchester City (1889).

(1) The ss. *Manchester City* (5,900 gross reg.) while on a voyage from the Tyne to Montreal, in ballast, lost the use of her steering gear through breakdown, and attempted to anchor off Dunnet Head. Both cables parted, and the weather being thick, with a gale from the N.W., and a rising sea, the position of the steamer was a dangerous one. At this time a National Institution's lifeboat came to her assistance and succeeded in getting a man on board who had good local knowledge of currents, &c. With great difficulty the *Manchester City* was manœuvred past the N. end of Stroma, and subsequently three small steamers successively rendered assistance in standing by or in towing ahead or astern and thereby assisting in the steering. Finally the *Manchester City* was brought to an anchor in Cromarty roads and the master went ashore. The cable again parted and the local knowledge of the captain of the last vessel rendering assistance enabled him to beach her on a safe bottom. Finally two tugs arrived from the Tyne and got her off and to a berth at Jarrow. The value of the *Manchester City* was 91,500*l.*, and the value of the salving vessels about 5,000*l.* each. The total awards given amounted to 6,700*l.*, of which the lifeboat crew got 1,400*l.*

The Minneapolis (1901).

(2) The *Minneapolis*, a twin screw steamship of 13,401 tons gross register, whilst on a voyage from New York to London with 62 saloon passengers, a general cargo, 273 horses and 500 cattle, fell in with the four-masted barque *Comet*, on a voyage from Greenock to Philadelphia in ballast. The crew of the *Comet* was taken off, and the *Comet* herself was towed safely to Ponta Delgarda in the Azores. 8,250*l.* in all was awarded as salvage, of which the owners received 6,175*l.*, the master 500*l.*, 150*l.* specially to boats crews engaged in bringing the crew of the *Comet* to the steamer, and 1,025*l.* to be divided amongst the whole crew, but the non-navigating portion (surgeon, purser, cooks, steward and stewardess) to share on the basis of one-third of their actual rating. The horsemen and their foreman, who gave some assistance in connection with the boats, to share one-third of the rating of an A.B.

The Beacon Light (1889).

(3) The *Beacon Light* (2,763 gross reg.), on a voyage from Philadelphia to Copenhagen, with petroleum, on January 8th, 1899, in long. 21·2 W., saw signals of distress proceeding from the ss. *Tampico*, which ss. had broken her tail end shaft. After four hours work ropes were passed and towage went on until a sudden gale caused the towing hawsers to part. During the next night the *Tampico* was lost sight of, and on the morning of the 11th the *Beacon Light* proceeded. The towage was between 90 and 126 miles. On the morning of the 14th the ss. *Ethiopia* (4005 gross reg.) sighted the *Tampico*, and after four unsuccessful attempts with the boats, a life-belt connection was made, and the towage proceeded until off Moville—a distance of 210 miles. The aggregate values were—*Beacon Light* 49,330*l.*, *Ethiopia* 67,717*l.* and *Tampico* 29,526*l.* Court awarded the *Beacon Light* 1,000*l.*, of which 525*l.* went to the owners, 60*l.* to the master, 115*l.* to the crew, with double shares to the boat's crew. The *Ethiopia* got 2,800*l.* in all—owners 2,000*l.*, master 270*l.*, crew 530*l.*

The Northumbria (1899).

(4) The *Northumbria* (2,009 gross register), when off Cape de Gatto, in the Mediterranean, sighted the French steamer *Elise* (2,042 gross register) on fire. The crew had left the vessel in their boats and came on board the *Northumbria*, whose master sent part of his own crew to ascertain the extent of the fire. There being apparently hope of saving the vessel, the crew of the *Northumbria* set to work and after great labour and at considerable risk the fire was got under. The French crew then requested to be allowed to return to their ship, but this the master of the *Northumbria* declined, and the *Elise* was towed into Gibraltar, a distance of 150 miles. The Court awarded 6,000*l.* in all. The aggregate values were *Northumbria* 20,880*l.*, and *Elise* 23,850*l.* The captain of the *Northumbria* got 1,000*l.* and the crew 2,500*l.* as their shares. The master and crew of the salving vessel have very rarely received such liberal allowances, but Mr. Justice Barnes was of opinion that in this particular case extraordinary energy and pluck had been exhibited.

(5) The *Mystic*, when 20 miles south-west of Seal Islands, off Nova Scotia sighted the Norwegian ss. *Nanna*. Her captain reported his shaft was broken and asked to be taken in tow. The *Mystic* got her 4-inch steel hawser and her 11-inch manila hawser connected and started for Halifax. At noon, off Cape Sable, the hawser parted, but was connected again at 3 p.m. Both steamers arrived safely off Sambro Ledges at 4 a.m. on the 5th, and at 8 a.m. while off Bell Rock the hawser again parted. It was snowing and blowing hard at the time. Meantime both ships had been carried by wind and tide towards the Ketch Harbour, where they were surrounded by breakers. The captain signalled to the *Nanna* to anchor, and just as his own anchor went down the *Mystic* struck three times forward, but backed off the shoal and dropped a second anchor. The sea was so high it was impossible to communicate with the shore or get help, and both ships had to lie where they were all night. Early on the 6th tugs reached the ships and a pilot was put on board the *Mystic* which arrived at Halifax about 9.30 a.m. on the 6th. The *Mystic* was found to be very badly damaged, and an estimate of $13,850 to be completed in 24 days was accepted by her owners. The value of the *Nanna* and cargo was $65,437. The judge in his award considered the damage to the *Mystic* was caused by the necessities of the service, and was not attributable to the fault of the salvors; that had the captain of the *Mystic* displayed a less adventurous spirit when the hawser parted it is quite probable the *Nanna* would have been lost; and taking everything into consideration, he concluded for an award of $27,000. Against this decision an appeal was entered. The majority of the judges (three to two) in the Supreme Court decided that the award was excessive and reduced it to $12,500, *i.e.*, less than the actual damage sustained by the *Mystic*. The amount was reduced on the ground that the master of the *Mystic* after clearing the breakers on the Sisters Rock and steering to the northward was guilty of a want of ordinary care and skill. The Judicial Committee of the Privy Council dismissed the shipowners appeal with costs.

The Nanna (1907).

(2.)—Towage.

The distinction between a towage and a salvage service is sometimes very fine, and not infrequently there is considerable difficulty in deciding on which side of the line a particular case falls. If there is a definite contract to tow on stated terms, any services rendered in pursuance of that contract, however difficult and arduous, are merely towage services. But where there is no antecedent agreement as to terms and the services of a tug are taken under circumstances more or less awkward and inconvenient as regards the assisted ship, or in furtherance of some more or less unusual operation or manœuvre having in it a material element of risk the Court has to determine whether on a fair review of all the facts the services were in the nature of salvage or towage.

In order that the owners of a tug may recover monies due under a towage agreement they must prove that they have completely fulfilled their part of the contract.

Illustration.

The Madras (1898).

On November 14th, 1897, the steam tugs *Royal Briton* and *Activ* were engaged to tow the sailing ship *Madras* from Kingroad to Sharpness Dock, and when off the entrance the *Madras* was slewed round head upon tide; a dense fog then came on and in the course of subsequent manœuvres the *Madras* took the ground forward. She sustained damage of so serious a nature that she was subsequently condemned and was sold where she lay. The net proceeds of ship, freight and cargo were 2,724*l.* *Held* that the towage contract was indivisible, and not having been fulfilled the tug owners were not entitled to recover for any part of the towage.

Contract to tow may be superseded.

The circumstances under which a service, in its origin a towage service, may assume the dignity of a salvage service were commented upon in the case of the *Minnehaha*:—

The Minnehaha (1861).

"When a steamboat engages to tow a vessel she does not warrant that she will do so under all circumstances, and at all hazards; but she does engage that she will use her best endeavours for that purpose, and will bring to the task competent skill, and such a crew, tackle, and equipments as are reasonably to be expected in a vessel of her class. She may be prevented from fulfilling her contract by a *vis major*, by accidents not contemplated, and which may render the fulfilment of her contract impossible, and in such case she is relieved from her obligation; the occurrence of mere unforeseen difficulties or temporary interruptions do not so release her. But if the towing vessel incurs risks and performs duties which were not within the scope of her original engagement, she is entitled to additional remuneration for such additional services if the ship be saved; in other words the towage contract is superseded."

Mutual obligations.

In a matter of towage, "the law implies an engagement that both tug and tow shall perform its duty in completing the contract: that proper skill and diligence shall be used on board of each, and that neither vessel by neglect or misconduct shall create unnecessary risk to the other or increase any risk which might be incidental to the services undertaken. If the wrongful act of either occasioned any damage to the other, such wrongful act would create a responsibility on the party committing it, if the sufferer had not by any misconduct or unskilfulness on her part contributed to the accident." (Per Lord Kingsdown in the *Julia.*)

Negligent towage.

If in the course of a towage service, through the negligence or misconduct of those on board the tug, or owing to the want of reasonable skill, or failure to supply proper equipment the tow is placed in a position of danger, the tug cannot claim salvage for extra services rendered necessary thereby, and is, moreover, liable in an action for

damages at the instance of the owners of the tow; unless, indeed, by the contract of towage it is expressly provided that the tug is not to be liable for the consequences of her own negligence.

Exceptions clause in towage contracts.

Owners of tug-boats very commonly stipulate that they shall be free from liability of any kind in case of neglect or default on the part of their servants in and about the performance of the towage contract. The wording of some of their exceptions clauses is ambiguous and indeterminate, and where this is so the measure of protection afforded is scant: a contractor can only avoid his liability for the consequences of his or his servants negligence by so stipulating in clear and unambiguous terms.

Attempts on the part of towage contractors to secure not only immunity from liability for the negligence of their servants but also an indemnity against all loss or damage to the tug herself should be strenuously resisted wherever it is possible so to do.

Where there has been negligence on the part of the tug and contributory negligence on the part of the tow in relation to a collision or stranding, the tug will, generally speaking, be denied any salvage for services subsequently rendered, and on the other hand the tow will be unable to recover damages from the tug.

Illustration.

The tug *Blazer* was engaged to tow the barque *Altair* from Falmouth to Hull for 120*l.* The courses on the voyage round were set by the *Blazer* and not interfered with by the *Altair*; from the outer Dowsing Light Vessel an improper course was steered, insufficient allowance being made for currents, and the *Altair* stranded. The weather was foggy and soundings were not taken by the *Altair* until just before the stranding. The *Altair* was afterwards towed off by the *Blazer* and three other tugs. On action brought by the *Blazer* for salvage *Held* that having assumed the direction of the courses and been negligent therein the *Blazer* was not entitled to any salvage, but also *Held* that the *Blazer* was not liable to the *Altair* for damages sustained by the *Altair*.

The Altair (1897).

Insufficient knowledge of risk.

Where a towage or salvage service is entered into by a tug on the assumption that the tow is in a seaworthy condition, and she is not so in fact, or any material fact which

would tend to increase the amount of the remuneration agreed upon is concealed from the tug, the tug is not prevented, by the fact of prior agreement, from claiming further reward for services rendered.

Illustration.

The Kingalock.

The master of a brig which had received serious damage agreed to give the master of a tug 40*l.* to tow the brig to London. The fact of the damage was concealed from the master of the tug. On learning the real facts of the case, the latter repudiated the agreement, and, on bringing an action for salvage, was awarded 160*l.*

The Relation of Tug and Tow.

Generally the tow controls the tug.

The practical relation of tug and tow is clearly and concisely stated in the two following passages from judgments delivered in the Admiralty Court:—

"It appears to me that the authorities clearly establish that the tow has, under the ordinary contract of towage, control over the tug. The tug and tow are engaged in a common undertaking, of which the general management and command belongs to the tow, and in order that she should efficiently execute this command, it is necessary that she should have a good look-out, and should not merely allow herself to be drawn, or the tug to go in a course which will cause damage to another vessel. It is essential to the safety of vessels being towed that there should not be a divided command, and convenience has established that the undivided authority should belong to the tow." (Per Hannen, J., in the *Niobe*.)

"In all ordinary cases of towage I consider it to be a part of the contract itself that the steam-tug should be subservient to the pilot on board the vessel in tow, and that it is the duty of the persons on board the steam-tug implicitly to obey and carry out his orders. I am well aware that mischief may in some instances arise from pilots having the entire control over steam-tugs, and giving directions contrary to the judgment and experience of masters of steam-tugs, conversant as they are with every part of the waters in which they are employed; at the same time I feel that still greater difficulties would be occasioned by two conflicting and independent authorities being exercised in the navigation of one and the same vessel." (Per Lushington, J., in the *Christina*.)

It is not, however, in every case that the owners of a tow are liable for the negligence of a tug. The owners of a tow are only liable for the consequences of neglect on the part of a tug resulting in a collision, where it is proved that those in charge of the tug were under the control and direction of those on board the tow.

Illustration.

A hopper barge possessing no motive power, but provided with a rudder, whilst being towed up the River Tees by the steam-tug *Quickstep*, came into collision with the ss. *Charles Dickens*. The collision was caused by the joint negligence of the *Quickstep* and the steamer. On action brought against the tug and tow jointly, *held* that the owners of the hopper barge were not liable for the negligence of those on the tug, the tug not being in fact the servant of and not in fact under the control of the tow. *The Quickstep* (1890).

As a general rule it is the duty of a tow to give such orders to the tug as are necessary to control the navigation of both vessels, but there is no obligation on the tow to be constantly giving directions to the tug as to matters which are specially within the province of the tug-master's duties: and if the tug-master by reason of local circumstances or knowledge, has special facilities of forming a judgment as to what is to be done, it is her duty to act without waiting for orders from the tow. (The *Isca*—1886).

Tug must obey positive orders.

It would appear that if a tug receives a specific order from the ship she is towing as to the course to be steered she is bound to obey; and if the ship runs into danger or meets with disaster by reason of such directions, the tug is not liable, and might be entitled to salvage for successful services subsequently rendered.

The tow is, in general, liable for all the consequences of negligence or improper navigation on the part of the tug.

Illustrations.

(a) The ship *Earl of Beaconsfield*, whilst in tow of a steam-tug, came into collision with a schooner through the negligence of the steam-tug. The ship paid the schooner money on account of the damage done to her, and in a subsequent action the ship sought to recover the money so paid from the tug. *Held* that the ship, being under legal liability to pay the money, was entitled to recover it as part of her damage from the wrong-doing tug. *The Stormcock* (1885).

(b) The schooner *Courier* was taken in tow outside the River Tyne by the tug *Pero Gomez* under a verbal agreement to tow to Ridley's Quay at the usual rate. In getting alongside the quay, the tug, by reason of too great speed, failed to get the *Courier's* bows sufficiently round, and her bowsprit caught a crane on the quay-side, toppling it into the river. An action was brought against the owners of the *Courier* for 146*l.* damage to the crane, and the owners paid that amount, subsequently claiming a like amount from the tug-owners. *Held*, on proof that the tug alone was negligent, that the shipowners were entitled to succeed. *The Courier* (1895).

But where a tug which has previously been steering a safe course so suddenly and deliberately departs from it as

to prevent the tow from checking the action of the tug, or otherwise acting in sufficient time to prevent disaster, it appears that the tug alone is liable. (Per Hannen, J., in the *Niobe*.)

As between tug and tow, the question of liability to pay for damage sustained by a third ship by the negligence of the tug and/or the tow is often a most difficult one to determine. If both tug and tow have been negligent, and a third party has recovered damages from either tug or tow, there is no right on the part of one to claim contribution from the other; and if the tow has herself been negligent she cannot successfully maintain an action against her tug for any part of her own damages.

Illustrations.

The Energy (1870).

(a) A barque with a pilot on board was being towed by a steam tug in compulsory pilotage waters. The tug suddenly, and without any previous direction from the pilot, ported across the bows of a brig under way, whereby the barque and brig came into collision. The Court, however, found as a fact that had the pilot given proper orders, even after the porting took place, the collision might have been avoided. *Held*, the tug to blame, but that the owners of the barque could not recover damages from the tug, because the pilot of the barque had neglected to give proper and timely directions to the tug.

Spaight v. *Tedcastle* (1881).

(b) But in another case it was said that "when the direct and immediate cause of damage is clearly proved to be the fault of the tug, contributory negligence by the tow cannot be established merely by showing that if those in charge of the ship had, in some earlier stage of navigation, taken a course, or exercised a control over the course taken by the tug, which they did not actually take or exercise, a different situation would have resulted, in which the same danger would not have occurred. Such an omission ought not to be regarded as contributory negligence, if it might, in the circumstances which actually happened, have been unattended with danger but for the tug's fault."

The Blackcock (1898).

(c) On the 17th December, 1898, the Norwegian barque *Morgengry* was being towed up the Bristol Channel towards Cardiff by the tug *Blackcock*. At about 9.15 p.m. the tug and tow were between Sully Island and the Ranie Spit buoy, when those on the tug sighted the masthead and green lights of the ss. *Mourne* nearly right ahead. The tug thereafter starboarded without receiving specific instructions from the tow on board which vessel there was practically speaking no look-out at all being kept. The *Mourne* ported and a collision resulted, the *Mourne* being sunk, and the *Morgengry* seriously damaged. An action was instituted by the owners of the *Mourne* against both the *Morgengry* and the *Blackcock*, and in this action the owners of the *Morgengry* abandoned their vessel, whereupon judgment went by default in favour of the *Mourne* as against the *Morgengry*. On trial of the action against the *Blackcock*, *held* both to blame. The question then arose whether the *Blackcock* in estimating the moiety payable was entitled to credit from the *Mourne* for the net proceeds of the *Morgengry*, but *held* in the Court of Appeal that the *Mourne* was entitled not only to her half damage from the *Blackcock* but was also entitled to retain the proceeds of the *Morgengry*.

(3.)—Pilotage.

Pilot or no pilot, the necessity for care and attention to all the details of navigation and to the performance of their duty by the crew, is equally incumbent upon the master and officers. Whatever the legal consequences of compulsory pilotage may be, a master's duty to his owners remains the same, and his owners' interests have often suffered in most grevious manner from his misapprehension of a pilot's office and authority. It is the possession of local knowledge and experience which makes a pilot's assistance valuable; but his skill in pure navigation is frequently deficient.

Relation of pilot to master.

On the question of the relative duties of master and pilot, the Elder Brethren of the Trinity House have formally expressed the opinion that "in well-conducted ships the master does not regard the presence of a duly licensed compulsory pilot as freeing him from every obligation to attend to the safety of the vessel; but while the master sees that his officers and crew duly attend to the pilot's orders, he himself is bound to keep a vigilant eye on the navigation of the vessel, and when exceptional circumstances exist, he must not only urge the pilot to use every precaution, but should insist upon such being taken."

Master and pilot.

Nothing short of urgent necessity, *e.g.* manifest incapacity on the part of a pilot, could justify a master in taking his ship out of the charge of a pilot, or giving orders in contradiction to those of a pilot in compulsory pilotage waters. Any interference by a master is unjustifiable except under extraordinary circumstances. It is not of course improper for a master to make suggestions or even to proffer advice: and even where wrong advice was thus offered and acted upon by the pilot it was held that the action of the pilot was his alone so far as liability for the consequences was concerned.

The relative duties of master and pilot have frequently been considered by the Courts. In the case of the *Christiana*, the facts and the material part of the judgment were as follows:—

The Christiana (1850).

The barque *Christiana* came to an anchor in the Downs, the wind blowing a strong gale with hard squalls from W.S.W. to S.S.W. Whilst riding to the gale, a ship was sighted right ahead, about three lengths off, driving fast into the hawse of the barque. A collision resulted with serious damage. The barque alleged negligence on the part of the ship in that, although there were many other vessels lying in the Downs and though the ship had been driving for hours, the top-gallant and main royal yards were not sent down, and the fore and mizen top-gallant masts were kept *in situ*; further, that the stay-sail and jibs were not set to assist in dragging off shore and clear of the shipping. The ship was in charge of a pilot, whose duties had ended when the ship came to anchor. In giving judgment, Baron Parke said:—"We think it clear that though the *Christiana* came to anchor the night before, and the pilot might have left her, yet that as he did not, she continued under his charge. The pilot has unquestionably the sole direction of the vessel in those respects where his local knowledge is presumably required; the direction, the course, the manœuvres of the vessel when sailing belong to him; and the Trinity Masters rightly decided that the neglect to set the stay-sail and jib after the barque was driven from her anchorage was the fault of the pilot alone. It was also his sole duty to select the proper anchorage place and mode of anchoring, and preparing for anchoring. But as to the top-gallant yards, masts, &c., the failure to send down which caused the damage, the Trinity Masters considered that it was the fault, not of the pilot exclusively, but of both pilot and master, the step being one which every master, according to the ordinary course of navigation, ought to have taken in any open roadstead where many vessels are lying: and in rough weather that duty attached to the master as well as the pilot."

In the case of the *Oakfield*, Sir J. Hannen said:—

Getting under way in fog.

"I think if there were such a state of obscurity owing to fog as would give rise to a plain prospect of danger, the master could not in those circumstances throw the whole responsibility on the pilot, if he ordered the vessel to get under way. . . . Though it might be the duty of the master to make suggestions to the pilot from time to time, it rests with the pilot to form his own opinion as to the value of the suggestions. It is only when the captain actually gives an order contrary to the pilot that he takes the responsibility for a manœuvre on himself."

But in the case of the *Islay*, in the Scotch Court of Session, Lord Kinnear said:—

Keeping under way.

"I think it falls to the pilot and not to the master to say when it is prudent for a vessel to leave the dock and enter the river. I cannot assent to the proposition that it is the master who is responsible for getting the ship under way, and that the pilot was responsible only for navigation after she had begun to move through the water. There could be no divided authority in a ship in a matter so vital to her safety. Where all the circumstances which make an operation hazardous are purely local conditions, the pilot is, in law, the proper judge, and is, in fact, a far more competent judge than any master could be."

And this is probably the true view as to responsibility herein.

In the *Girolimo*, Sir J. Nicoll said :—

"The collision occurred from the vessel going on in the fog, not from any act of bad steerage, want of knowledge of shoals, or any incapacity as pilot, but from proceeding at all. It seems to be nearly admitted that if the vessel had set off in this fog, blame would have been imputable to the master: if so, was he not blameable in going on in the fog? Had he not a right to resume his authority? Did he not owe it to his owners and to other persons whose property might be damaged by a collision to insist upon bringing the vessel up."

The point was not expressly decided, but it can hardly be doubted that the question of continuance under way in a fog is within the province of the pilot to determine: probably, however, if the fog was such as that no reasonable man would remain under way the master of the ship would also be held in fault.

Dr. Lushington, in the *Lochlibo*, said it appeared to him that—

"It would be a most dangerous doctrine to hold forth, considering the duties imposed upon pilots and the experience and local knowledge they are supposed to possess, if I were to sanction the interference of a master in any way in the performance of those duties which the pilot must be considered peculiarly competent to discharge, and of which the master, in the majority of cases, must be a very inferior judge. . . . If the pilot was utterly incompetent to the proper discharge of his duties, it would clearly be incumbent upon the master to interfere for the protection of the lives and of the property on board his vessel. Such, however, would be a case of extreme necessity."

And lastly, Mr. Justice Butt gave expression to his views in the following terms :—

"The pilot is the judge of nearly all matters connected with the navigation of a ship, and unless he misjudges them and acts upon a palpably false and wrong judgment, such as to make it manifest to any reasonable man that it ought not to be allowed, then the captain has no right to interfere with the pilot at all; and as to his interfering with the pilot at the very last moment when two ships are just coming together, it would be a very dangerous thing to encourage the notion that at the moment when a collision was almost, if not actually, inevitable the captain ought to interfere, except by suggestion." *The Schwan* (1891).

Compulsory pilotage.

It is not always the case that a ship is freed from responsibility for the wrongful or negligent acts of a

pilot compulsorily employed. According to the law of most foreign countries a pilot, whose employment is compulsory, is to be regarded not as controlling the navigation, but simply as an adviser of the master, who remains responsible for all loss and damage resulting from the negligent navigation of his ship.

Illustrations.

The Guy Mannering (1882). (a) By the Suez Canal Regulations, every vessel of over 100 tons burden is compelled to take a pilot whilst passing through the Canal; but the regulations enact that pilots simply place at the disposal of masters their experience and practical knowledge without accepting any degree of responsibility. Hence, where a collision took place in the Canal through the negligence of a Canal pilot, the owners of the vessel by whose pilot the collision was thus brought about were held liable in damages to the owners of the other vessel.

The Agnes Otto (1887). (b) Again, by the regulations for the navigation of the Lower Danube, the employment of a pilot is compulsory, but his duties are confined to pointing out the local peculiarities of the river, the real responsibility for the navigation resting upon the master. Negligence of the pilot has been held not to relieve the shipowner of liability for a collision resulting therefrom.

Though the general rule in this country is to the contrary effect, the default of a compulsory pilot may, under certain circumstances, cause liability for resulting damage to be thrown on the ship. For a master is bound to interfere with a pilot's action when in obvious contravention of rules and bye-laws, local or otherwise.

Illustration.

The Ripon (1885). From the main peak of a steamer dropping up the Humber stern foremost, a bright light was improperly exhibited by the order of the pilot, and whilst so showing this light she came into collision with another ship. *Held* the owner of the steamer liable, since the owner should not have permitted what was a clear infringement of the regulations. "A master must consider for himself whether the law in respect of lights is being infringed, and if it is, he must take steps to stop it." (Per Butt, J.)

Where a ship is going into dock under the direction of a compulsory pilot, the ship is protected from liability until the operation of docking is finally completed. That protection does not cease because a vessel anchors in the river waiting for the tide in order to go into dock; nor does it cease, although the limits of a compulsory pilotage district have been passed, if the pilot still, in fact, retains control over the navigation of the ship. (The *Charlton*—1895).

If a casualty results from the joint negligence of a compulsory pilot and some officer or other member of the crew of the ship he is piloting, the legal consequences of compulsory pilotage do not come into operation, that is to say, the shipowner is not to any extent relieved from liability for damage done.

It is a matter of no small difficulty to determine in particular cases whether pilotage is compulsory or not; for in each particular investigation the combined effect of the M.S. Act, 1894, Private or Local Acts (if any), and perhaps also the bye-laws for the time being in force under the Acts, have to be considered. It was only decided, for instance, in 1890, that pilotage in and out of the port of Llanelly (River Burry), was compulsory, though the Local Act dated so far back as 1813, and the General Act to 1843. By a recent Local Act, however, pilotage over Lougher and Burry bars appears now to be made free.

There is an important general exemption from compulsory pilotage as follows:—

"The master and owner of any ship passing through any pilotage district in the United Kingdom, on a voyage between two places, both situate out of that district, shall be exempted from any obligation to employ a pilot in such district, or to pay pilotage rates when not employing a pilot within such district; providing that the exemption under this section shall not apply to ships loading *(a)* or discharging at any place situate within such district, or at any place situate above such district on the same river or its tributaries." **M.S. Act, 1894, sec. 605.**

The master of any unexempted ship, navigating through a compulsory pilotage district, who, after a qualified pilot has offered to take charge of his ship or has made a signal for that purpose, either himself pilots the ship without possessing the necessary pilotage certificate or employs or continues to employ an unqualified person to pilot her incurs a penalty of double the amount of the ordinary pilotage charge.

(*a*) It has been held that a ship calling at a port for bunker coals is a ship "loading" within this Act, and must consequently employ a pilot.

Apart from the London Trinity House Districts, pilotage is compulsory in the approaches to the following places and (unless otherwise stated) it is compulsory both going in and out:—

Places where compulsory pilotage exists.

Aberdeen (inward); Arbroath, Arundel and Littlehampton (all vessels of 30 tons and upwards); Ayr (all vessels of 40 tons and upwards); Ballina (inward); Belfast (all vessels except those in ballast); Blakeney (all vessels of 50 tons and upwards); Boston (all vessels over 30 tons); Bristol (all vessels except coasters, Irish traders, and vessels bound to or from Cardiff, Newport or Gloucester; Buckie, Buryhead (all vessels over 40 tons); Carlingford Bar, Chester (all vessels except coasters and Irish traders); Coleraine, Drogheda (all vessels except steamships and vessels under 30 tons; Dublin (all vessels except coasters under 50 tons; vessels in ballast, or laden with fish in bulk, or potatoes); Dundalk (all vessels except those under 30 tons); Fraserburgh (all vessels of 30 tons or upwards); Galway (all vessels over 50 tons); Glasgow (all vessels over 60 tons navigating between Hutchinsontown Bridge and Newark Castle, except vessels of under 100 tons in tow of a tug whose master has a pilotage certificate; Goole and Kingston-upon-Hull (all vessels except British coasters, British vessels drawing less than 6 feet of water, and vessels under 150 tons, drawing 10 feet of water or less, and navigating between Goole and Hull Roads); Irvine, King's Lynn (except vessels under 30 tons); Kirkcaldy (inward); Lancaster; Liverpool (all vessels except coasters in ballast, or coasters under 100 tons); Llanelly (all vessels with cargo, or if over 40 tons reg. in ballast); Londonderry (all vessels except those under 75 tons or colliers outward bound in ballast); Lossiemouth (all vessels over 40 tons); Newcastle, including Tynemouth and Shields (ships carrying passengers between places in the U.K.); Peterhead (all vessels of 30 tons and upwards); Pulteney (all vessels over 40 tons); Sligo (inward for all ships of 20 tons and upwards); Southwold (all vessels of 40 tons and upwards); Swansea (inward bound, except vessels under 100 tons in ballast); Tralee (for vessels over 30 tons); Waterford (all vessels unless drawing less than 6 feet); Westport (unless master is licensed); Wexford (all vessels with cargo or passengers, except those to or from Rosslare); Wick (all vessels over 20 tons, unless masters or mates have pilotage certificates); Wicklow.

Trinity House districts.

The pilotage authority for the coast from Orfordness to the Isle of Wight is the London Trinity House, whose jurisdiction is divided as follows:—(1) The London district, from Orfordness to Dungeness, and including the Thames and Medway up to London and Rochester Bridges; (2) The English Channel district from Dungeness to the Isle of Wight; and (3) the Trinity House outport districts, comprising those districts which no special provision has been made by statute or otherwise, which are as follows:—Aberdovey, Beaumaris, Bridgwater, Bridport, Carnarvon, Carlisle, Colchester, Dartmouth, Exeter, Falmouth, Fleetwood and Barrow, Fowey, Harwich, Holyhead, Ipswich, Isle of Wight, Lowestoft, Maldon, Milford, Neath, Newhaven, Padstow, Penzance, Plymouth, Poole, Portmadoc, Preston, Rochester, Rye, Hayle, Scilly, Shoreham, Southampton, Teignmouth, Wells, Weymouth, Woodbridge, and Yarmouth.

The following sections in the M.S. Act, 1894, are of general importance:—

Sec. 604. The master of every ship carrying passengers between any place in the British Isles and any other place so situate shall, while navigating within the limits of any district for which pilots are licensed under this or any other Act, employ a qualified pilot unless he or the mate of his ship hold a pilotage certificate applying to the district; and if he fails to do so, shall for each offence be liable to a fine not exceeding 100*l.*

Note.—A master's wife is not a "passenger" and distressed seamen are not "passengers" within the meaning of the M.S. Act, 1894, Secs. 604 and 625. This may have a serious bearing upon the measure of a shipowner's liability.

Illustration.

The barge *Phœbe* was sunk by collision with the ss. *Clymene* in Galleons Reach, River Thames, the pilot of the steamship being solely to blame. The *Clymene* belonged to the port of London, but had at the material time five distressed seamen shipped at a foreign port under the order of a British Consul. If carrying "passengers," the owners of the *Clymene* would have been exempt from liability, but Barnes, J., *held* she was not carrying passengers within the meaning of the Act. *The Clymene* (1897).

Sec. 622. Subject to any alterations to be made by the Trinity House, and the exemptions under this part of this Act, pilotage shall be compulsory within the London district and the Trinity House outport districts.

Sec. 625. The following ships, when not carrying passengers shall, without prejudice to any general exemptions under this part of this Act, be exempted from compulsory pilotage in the London district and in the Trinity House outport districts:—

(1.) Ships employed in the coasting trade of the U. K. *(a)*.

(2.) Ships of not more than 60 tons burden.

(3.) Ships trading *(b)* from any port in Great Britain within the London district or any of the Trinity House outport districts to the port of Brest in France or any port in France north and east of Brest, or to the Channel Islands or Isle of Man.

(4.) Ships trading from the port of Brest or any port in Europe north and east of Brest, or from the Channel Islands or Isle of Man to any port in Great Britain within the said London or Trinity House outport districts.

(5.) Ships navigating within the limits of the port to which they belong.

Sec. 633. An owner or master of a ship shall not be answerable to any person whatever for any loss or damage occasioned by the fault or

(*a*) Vessels whose main employment is in foreign trade are not within this exception, even though carrying cargo at the material time from one port in the U.K. to another.

(*b*) In *Courtney* v. *Cole* (1897), a ship running on a line from Amsterdam and London to the East while going between Amsterdam and London was held to be "trading" between the last-named ports.

incapacity of any qualified pilot acting in charge of that ship within any district where the employment of a qualified pilot is compulsory by law.

NOTE —(1) This section protects shipowners in all cases where the employment of a pilot being compulsory, a duly qualified pilot is on board and in charge within a pilotage district, and applies to all ships, even though the law of the place of collision would not give such protection.

(2) The meaning of the term "trading" has on several occasions been the subject matter of litigation.

Illustration.

The Rutland (1896).

The ss. *Edenbridge* whilst on a voyage from Rosario with cattle and sheep for London and general cargo for Rotterdam having discharged the cattle at Deptford, was proceeding down the River Thames bound for Rotterdam, when she came into collision with the ss. *Rutland*, bound from Hartlepool for London. Both steamers were to blame, but on the *Edenbridge* the sole fault lay with the pilot. *Held* the owners of the *Edenbridge* liable that steamship being, within the meaning of Sec. 625 of the 1894 Act, a "ship trading" from a port in Great Britain within the London district to a port in Europe north and east of Brest, and consequently exempt from compulsory pilotage.

CHAPTER XIII.

THE ADJUSTMENT OF DISPUTES.

Litigation—Arbitration.

Where the amount in dispute is comparatively small a disposition to refer the dispute to an arbitrator or arbitrators is now constantly in evidence, but already the Courts of Law have been wholly relieved of several classes of cases where the figures in dispute run high, *e.g.*, claims for salvage under Lloyd's form, disputes as between members of the Corn Trade Association, &c.

It is, of course, open to disputants to have a matter arbitrated in any way they think fit, but there are four methods in common use, and the choice is necessarily regulated by the importance of the principle involved or the amount in dispute :—

(1.) Each party appoints an arbitrator and the two arbitrators an umpire, or third arbitrator, the parties being legally represented before the three.

(2.) Each party appoints an arbitrator, and the two meet, discuss the case, and failing agreement, call in an umpire. The arbitrators then act before the umpire as party men, and the final decision rests with the umpire. Here there is no legal representation.

(3.) The parties agree on a sole arbitrator, before whom the legal representatives of the parties appear.

(4.) The parties agree on a sole arbitrator, who deals with the case on documents submitted by the respective parties, but with power to the arbitrator

to call for production of any further documents or the attendance of any witness he may regard as essential.

Under the Arbitration Act, 1889, the rules relating to arbitrations are clearly defined. Arbitrators have practically all the powers of a Judge, including discretion as to costs, and, unless there is an agreement to the contrary between the parties, are bound by the strict legal rules of evidence in the same way.

An agreement for arbitration is always to a single arbitrator, unless otherwise expressly agreed. If the agreement provides for two arbitrators, these two can appoint an umpire, but can only do so within the time allowed for making an award, which is three months after entering upon the arbitration, although the arbitrators have power to enlarge the time for making an award; but must do so in writing. If an umpire is appointed, he must make his award within one month after the time for the arbitrators to make their award has expired, and he can similarly enlarge the time by any writing signed by him.

If a party to an arbitration agreement commences legal proceedings, the other party can apply to the Court to stay proceedings, provided he does so immediately and proves that he has always been ready and willing to assist in the proper conduct of the arbitration.

Where the agreement provides for two arbitrators, and one party fails to appoint an arbitrator, either originally or by way of substitution, the other party, after giving seven clear days' notice to the party making the default, may appoint his arbitrator to act as sole arbitrator, and his award will be binding on both parties as if he had been appointed by consent, but the Court has power to set aside any appointment made in this way, but will

not do so unless the appointment of an arbitrator was obviously inequitable. In all other cases of arbitration application has to be made to the Court if either party refuses to appoint their arbitrator, an umpire, or third arbitrator.

There is a curious defect in the Act, inasmuch as if the agreement provides for a reference to three arbitrators, as distinguished from two arbitrators and an umpire, and one of the parties declines to appoint his arbitrator, the Court cannot compel him to, though the Court can prevent him from instituting legal proceedings in spite of the agreement. If, however, he has appointed his arbitrator and then does not concur in the appointment of a third arbitrator, the Court will appoint one. An additional disadvantage in having three arbitrators is the fact that all three must sign the award to make it binding, though an award by an umpire alone is sufficient.

Any arbitrator can state an award on a question of law in the form of a special case for the opinion of the Court, and the Court has power to compel him to do so at any stage of the proceedings. An award can by leave of the Court be enforced in the same way as a judgment of the Court.

The chief requirements in and about the adjustment of any maritime or commercial dispute are dispatch, efficiency and economy. The Admiralty Court is, under normal conditions, beyond any question the promptest tribunal in the world for dealing with maritime cases. It is not uncommon to have collision cases tried within a month of the event giving rise to the suit. In a somewhat less but still satisfactory degree the Commercial Court fulfills the desired conditions. The Judges sitting there are exceedingly able men, but the Court too readily gets into

arrear, with resultant inconvenience and heavy expense to litigants. In both Courts, however, the expense of fighting is such as to call for an alternative method of determining disputes, unless the amount involved runs into four figures. There are, of course, really important questions of construction or of principle which from time to time call for decision, quite apart from the amount involved.

The County Courts have jurisdiction up to £300 on the Admiralty side, and there are, perhaps, four Judges of such Courts in this country competent to deal with shipping cases: but, broadly speaking, the expense and uncertainty are such as to make it highly undesirable to call in aid the jurisdiction of the County Court. In a coastwise salvage case the costs payable by the unsuccessful party are rarely less than 100*l.*, although any competent Admiralty solicitor would give a thoroughly satisfactory award as to amount after a perusal of the statements on both sides at a fee of a few guineas. A collision case involving, say, 40*l.* will probably cost three times as much in the matter of costs, and not long since in a damage to cargo case, in which the sum of 3*l.* 10*s.* 0*d.* was in dispute, the plaintiff's costs taxed at 30*l.*—the only issue being the sufficiency of the dunnage used for a parcel of potatoes.

Given a thoroughly experienced man as sole arbitrator, it is an easy matter to have a matter determined promptly, efficiently and at little expense. A reference to three, with legal representation, is nearly as expensive as an action at law, and, moreover, tends to dilatoriness. A reference to one, with full powers as to documents and evidence, each party employing solicitors if he thinks fit to get his case up, is exceedingly convenient, and, moreover, has proved in practice quite satisfactory where a man of first-rate ability has been selected.

Fortunately, there is ample scope for choice. In the City of London very many collision cases are dealt with by solicitors of wide experience, *e.g.*, Mr. E. G. Gibson, as sole arbitrator on documents alone, with absolute discretion as to costs; and although on pure questions of fact it might seem desirable to have the witnesses submitted to cross-examination, it is a matter of common knowledge that where a man of exceptional experience and knowledge is dealing with a question of credibility, he can gauge probabilities and draw inferences in such a manner as to place him in a greater position of vantage than a Judge of less capacity who actually has the witnesses before him.

In the realm of pure commerce the tendency to arbitrate is an ever increasing one. True, the effort to establish a Chamber of Arbitration in London has proved futile, but it was doomed to failure from the outset, for the reason that commercial men will always desire to know beforehand who will deal with their case: confidence in your tribunal is of the essence. There is no difficulty in the shipping trade to secure men of first-rate ability, and every one who goes before arbitrators of the type of Mr. Henry Langridge. Mr. C. E. Brightman, Mr. C. T. Glanville or Mr. C. W. Gordon has the satisfaction of knowing that such men will bring to bear upon the matter in issue not only a well stored mind, but a determination to thoroughly inform themselves on the subject matter of the issue, if perchance their own experience falls short of full knowledge or complete assurance. The freedom enjoyed by commercial arbitrators in the matter of enquiry and investigation is a distinctly valuable feature.

The term "arbitrator" is used perhaps too vaguely. On many arbitrations it is only by courtesy that the direct nominees of the parties to the dispute can be

deemed "arbitrators" at all; they are, in fact, the representatives of the disputant, whose functions are to secure a finding favourable to their clients if they can honestly do so. Where there is no legal representation on either side, but all the work is done by the party's "arbitrator," the umpire is practically a sole arbitrator, and it is difficult to see wherein the parties gain any advantage by nominating each an "arbitrator." They might with greater advantage agree a sole arbitrator at the outset, and engage a lawyer of special experience to put the case forward in the best light possible. Where there are no serious complications or the amount in dispute is not very considerable, a sole arbitrator on the documents and statements alone is the ideal method of determining the dispute, both from the point of view of avoidance of delay and minimising expense. Arbitration is almost universally provided as the sole remedy of a member aggrieved by any decision of the Committee or Directors of the Mutual Clubs and Associations. A submission to a sole arbitrator on documents alone or an agreed statement of facts is generally sufficient, and decisions have followed almost immediately upon the dispute, at a cost of a few guineas only in each case. By way of contrast, the costs in County Court proceedings on the Admiralty side are scandalous. Sooner or later it is to be hoped that County Court Judges will be vested with the power to award over and above the amount of the judgment a moderate lump sum in lieu of taxed costs, and this allowance should be regulated by the amount at stake and the importance of the case. On arbitrations, too, much delay and expense would be saved if arbitrators gave a stated sum for costs and/or expenses to the successful party rather than a general award of costs.

ARBITRATION AGREEMENT.

SHORT FORM.

Memorandum of Agreement made the day of 19 BETWEEN the Owners of the S.S. " " of the one part and the Owners of the S.S. " " of the other part.

WHEREAS a collision occurred between the s.s. " " and the s.s. " " on the day of 19 in the , by reason of which both vessels sustained damage. AND WHEREAS both parties claim damages arising out of the said collision the one against the other. AND WHEREAS it has been agreed by the Owners of the said vessels that the matter shall be referred to arbitration.

NOW IT IS HEREBY AGREED as follows:—

1. That the matter shall be referred to the sole arbitration of of to determine the question of liability and to assess the amount of the damages payable by the wrong doing vessel or vessels.

2. The parties hereto shall put before the arbitrator all documents in their power or possession referring or in any way relating to the said dispute, and such statements of witnesses as they may wish.

3. The arbitrator shall not be bound by strict rules of evidence, but shall be at liberty to act upon any evidence documentary or otherwise that he shall think fit, and if he so desires he shall be at liberty to call before him any witnesses who shall present themselves before the said arbitrator and be questioned without the intervention of solicitors or counsel on either side.

4. The arbitrator shall make an interim award on the question of liability.

5. Except as otherwise provided, the terms of the Arbitration Act, 1889, or any modification thereof shall apply to the arbitration under this Agreement. AS WITNESS the hands of the said parties the day and year first before written.

APPENDIX.

(1). YORK-ANTWERP RULES, 1890.

(2). FORM OF SALVAGE AGREEMENT.

(3). SALVAGE AGREEMENT, STANDARD FORM A APPROVED BY LLOYDS.

(4). FORM OF BOTTOMRY BOND.

(5). FORM OF LLOYDS AVERAGE BOND.

(6). WEATHER REPORT INDEX.

(7). CARRIAGE OF GRAIN—OFFICIAL NOTICES.

(8). THE "HARTER ACT," 1893.

(9). CANADIAN WATER CARRIAGE OF GOODS ACT, 1910.

(10). COMMONWEALTH ACT, 1904.

(11). WORKMEN'S COMPENSATION ACT, 1906.

(12). MARINE INSURANCE (GAMBLING POLICIES) ACT, 1909.

(13). SHIPOWNERS' NEGLIGENCE ACT, 1905.

(14). MERCHANT SHIPPING ACT, 1906.

(15). CHAMBER OF SHIPPING WELSH COAL CHARTER, 1896.

(16). CHAMBER OF SHIPPING WELSH COAL B/L.

(17). CHAMBER OF SHIPPING AZOFF BERTH CONTRACT, 1910.

(18). SHIPPING FEDERATION.

(19). DECLARATION OF PARIS AND DECLARATION OF LONDON.

(20). LETTER OF INSTRUCTIONS TO PURSER, A.D. 1856.

(1.)—YORK-ANTWERP RULES, 1890.

Rule I.—JETTISON OF DECK CARGO.

No jettison of deck cargo shall be made good as general average.

Every structure not built in with the frame of the vessel shall be considered to be part of the deck of the vessel.

Rule II.—DAMAGE BY JETTISON AND SACRIFICE FOR THE COMMON SAFETY.

Damage done to a ship and cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened, or other opening made, for the purpose of making a jettison for the common safety, shall be made good as general average.

Rule III.—EXTINGUISHING FIRE ON SHIPBOARD.

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage to such portions of the ship and bulk cargo, or to such separate packages of cargo, as have been on fire.

Rule IV.—CUTTING AWAY WRECK.

Loss or damage caused by cutting away the wreck or remains of spars, or of other things which have previously been carried away by sea-peril, shall not be made good as general average.

Rule V.—VOLUNTARY STRANDING.

When a ship is intentionally run on shore and the circumstances are such that if that course were not adopted she would inevitably sink or drive on shore or on rocks, no loss or damage caused to the ship, cargo, and freight, or any of them, by such intentional running on shore shall be made good as general average. But in all other cases where a ship is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.

Rule VI.—CARRYING PRESS OF SAIL. DAMAGE TO OR LOSS OF SAILS.

Damage to or loss of sails and spars, or either of them, caused by forcing a ship off the ground or by driving her higher up the ground, for the common safety, shall be made good as general average; but where a ship is afloat, no loss or damage caused to the ship, cargo or freight, or any of them, by carrying a press of sail, shall be made good as general average.

Rule VII.—DAMAGE TO ENGINES IN REFLOATING A SHIP.

Damage caused to machinery and boilers of a ship, which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage.

Rule VIII.—EXPENSES OF LIGHTENING A SHIP WHEN ASHORE, AND CONSEQUENT DAMAGE.

When a ship is ashore, and in order to float her, cargo, bunker coals, and ship's stores, or any of them, are discharged, the extra cost of lightening, lighter hire, and re-shipping (if incurred), and the loss or damage sustained thereby, shall be admitted as general average.

Rule IX.—CARGO, SHIP'S MATERIALS, AND STORES BURNT FOR FUEL.

Cargo, ship's materials and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average when and only when an ample supply of fuel has been provided; but the estimated quantity of coals that would have been consumed, calculated at the price current at the ships' last port of departure at the date of her leaving, shall be charged to the shipowner and credited to the general average.

Rule X.—EXPENSES AT PORT OF REFUGE, ETC.

(*a*) When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading in consequence of accident, sacrifice, or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence, with her original cargo, or a part of it, the corresponding expenses of leaving such port or place, consequent upon such entry or return, shall likewise be admitted as general average.

(*b*) The cost of discharging cargo from a ship, whether at a port or place of loading, call, or refuge, shall be admitted as general average, when the discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident during the voyage, to be repaired, if the repairs were necessary for the safe prosecution of the voyage.

(*c*) Whenever the cost of discharging cargo from a ship is admissable as general average, the cost of reloading and storing such cargo on board the said ship, together with all storage charges on such cargo, shall likewise be so admitted. But when the ship is condemned, or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the voyage, shall be admitted as general average.

(*d*) If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expenses, either she is towed thence to some other port or place of repair or to her destination, or the cargo, or a portion of it, is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transhipment and forwarding, or any of them (up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved.

Rule XI.—WAGES AND MAINTENANCE OF CREW IN PORT OF REFUGE, ETC.

When a ship shall have entered or been detained in any port or place under the circumstances, or for the purposes of the repairs mentioned in Rule X., the wages payable to the master, officers, and crew, together with the cost of maintenance of the same, during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted as general average. But when the ship is condemned, or does not proceed on her original voyage, the wages and maintenance of the master, officers, and crew incurred after the date of the ship's condemnation or of the abandonment of the voyage, shall not be admitted as general average.

Rule XII.—DAMAGE TO CARGO IN DISCHARGING, ETC.

Damage done to or loss of cargo necessarily caused in the act of discharging, storing, reloading, and stowing, shall be made good as general average when, and only when, the cost of those measures respectively is admitted as general average.

Rule XIII.—DEDUCTIONS FROM COST OF REPAIRS.

In adjusting claims for general average, repairs to be allowed in general average shall be subject to the following deductions in respect of "new for old," viz. :—

In the case of iron or steel ships from date of original register to the date of accident—

Up to 1 year old (A)	All repairs to be allowed in full, except painting or coating of bottom, from which one-third is to be deducted.
Between 1 and 3 years (B)	One-third to be deducted off repairs to and renewal of woodwork of hull, masts, and spars, furniture, upholstery, crockery, metal and glass ware; also sails, rigging, ropes, sheets, and hawsers (other than wire and chain), awnings, covers, and painting; one-sixth to be deducted off wire rigging, wire ropes, and wire hawsers, chain cables and chains, donkey engines, steam winches and connections, steam cranes and connections; other repairs in full.
Between 3 and 6 years (C)	Deductions as above under clause B, except that one-sixth be deducted off ironwork of masts and spars, machinery (inclusive of boilers and their mountings).
Between 6 and 10 years (D)	Deductions as above under class C, except that one-third be deducted off ironwork of masts and spars, repairs to and renewal of all machinery (inclusive of boilers and their mountings), and all hawsers, ropes, sheets, and rigging.
Between 10 and 15 years (E)	One-third to be deducted off all repairs and renewals, except ironwork of hull and cementing and chain cables, from which one-sixth to be deducted; anchors to be allowed in full.
Over 15 years (F)	One-third to be deducted off all repairs and renewals; anchors to be allowed in full; one-sixth to be deducted off chain cables.
Generally (G)	The deductions (except as to provisions and stores, machinery and boilers) to be regulated by the age of the ship, and not the age of the particular part of her to which they apply; no painting bottom to be allowed if the bottom has not been painted within six months previous to the date of accident; no deduction to be made in respect of old material, which is repaired without being replaced by new, and provisions and stores which have not been in use.

In the case of wooden or composite ships :—

When a ship is under one year old from date of original register, at the time of accident, no deduction new for old shall be made. After that period a deduction of one-third shall be made with the following exceptions :—

Anchors shall be allowed in full; chain cables shall be subject to a deduction of one-sixth only.

No deduction shall be made in respect of provisions and stores which had not been in use.

Metal sheathing shall be dealt with by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt, and labour metalling are subject to a deduction of one-third.

In the case of ships generally :—

In the case of all ships, the expense of straightening bent iron work, including labour of taking out and replacing it, shall be allowed in full.

Graving-dock dues, including expenses of removals, cartage, use of shears, stages, and graving dock materials shall be allowed in full.

Rule XIV.—TEMPORARY REPAIRS.

No deductions "new for old" shall be made from the cost of temporary repairs of damage allowable as general average.

Rule XV.—LOSS OF FREIGHT.

Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.

Rule XVI.—AMOUNT TO BE MADE GOOD FOR CARGO LOST OR DAMAGED BY SACRIFICE.

The amount to be made good as general average for damage or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the date of the arrrival of the vessel or at the termination of the adventure.

Rule XVII.—CONTRIBUTORY VALUES.

The contribution to a general average shall be made upon the actual values of the property at the termination of the adventure, to which shall be added the amount made good as general average for property sacrificed; deduction being made from the shipowner's freight and passage money at risk, of such port charges and crew's wages as would not have been incurred had the ship and cargo been totally lost at the date of the general average act or sacrifice, and have not been allowed as general average; deduction being also made from the value of the property of all charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average. Passengers' luggage and personal effects, not shipped until bill of lading, shall not contribute to general average.

Rule XVIII.—ADJUSTMENT.

Except as provided in the foregoing rules, the adjustment shall be drawn up in accordance with the law and practice that would have governed the adjustment had the contract of affreightment not contained a clause to pay general average according to these rules.

(2.)—SALVAGE AGREEMENT.

On Basis of Lloyd's Standard Form of "No Cure—No Pay" Agreement.

It is agreed between

acting for the owners of the Ship and her Cargo according to their respective interests and (hereinafter called "the Contractor") that the latter shall endeavour to salve the said Vessel and her Cargo, and to take the same into or such other place as may be hereafter agreed between the parties hereto. The said services shall be salvage services, and shall be rendered upon and in accordance with the terms of the Standard Form of "No Cure—No Pay" Agreement published by the Committee of Lloyd's, the provisions of which shall apply to this Agreement as if actually inserted herein.

The remuneration demanded by the Contractor and which, subject to the provisions of the said Standard Form, shall be paid to him for his services is £ in case of success, and a maximum of per cent. of the value or proceeds of the property salved in case of only partial success.

Subject to the provision of the Standard Form the Contractor shall have a lien on the property salved for his remuneration.

(3.)—STANDARD FORM OF SALVAGE AGREEMENT.

(Approved and Published by the Committee of Lloyd's.)

NO CURE—NO PAY.

On board the Dated 19

It is hereby Agreed between Captain of the (afterwards called "the Master") and (afterwards called "the Contractor") as follows:—

1. The Contractor agrees to use his best endeavours to salve the and her cargo and take her into or other place to be hereafter agreed with the Master, providing at his own risk all proper steam and other assistance and labour. The services shall be rendered and accepted as salvage services upon the principle of "no cure —no pay" and the Contractor's remuneration in the event of success shall be £ , that being the sum demanded by him, unless this sum shall afterwards be objected to as hereinafter mentioned, in which case the remuneration for the services rendered shall be fixed by Arbitration in London in the manner hereinafter prescribed: and any other difference arising out of this Agreement or the operations thereunder shall be referred to Arbitration in the same way.

2. The Contractor may make reasonable use of the vessel's gear, anchors, chains and other appurtenances during and for the purpose of the operations free of costs, but shall not unnecessarily damage abandon or sacrifice the same or any other of the property.

3. Notwithstanding anything hereinbefore contained should the operations be only partially successful without any negligence or want of ordinary skill and care on the part of the Contractor or of any person by him employed in the operations, and any portion of the Vessel's Cargo or Stores be salved by the Contractor, he shall be entitled to reasonable remuneration not exceeding a sum equal to per cent. of the estimated value of the property salved at or if the property salved shall be sold there then not exceeding the like percentage of the net proceeds of such sale after deducting all expenses and customs duties or other imposts paid or incurred thereon but he shall not be entitled to any further remuneration reimbursement or compensation whatsoever and such reasonable remuneration shall be fixed in case of difference by Arbitration in manner hereinbefore prescribed.

4. The Contractor engages not to arrest or detain the Vessel or Cargo or property salved except in the event of any attempt being made to remove the same from without his consent before the said sum of £ or the said maximum remuneration mentioned in Clause 3 (as the case may be) has been deposited in Cash with the Committee of Lloyd's to abide the result of the Arbitration hereinbefore mentioned, or such security or bail therefor as the Committee may in their absolute discretion consider sufficient has been given to them to abide the like result. Subject to this Agreement the Contractor shall have a lien on the property salved for his remuneration.

5. The Committee of Lloyd's after the expiry of 42 days from the date of the Deposit having been made or security or bail having been given as provided for in Clause 4 shall realise or enforce the same and pay over the amount thereof to the Contractor unless they shall meanwhile have received written notice of objection and a claim for Arbitration from any of the parties entitled and authorised to make such objection and claim or unless they shall themselves think fit to object and demand Arbitration. The receipt of the Contractor shall be a good discharge to the Committee for any monies so paid and they shall incur no responsibility to any of the parties concerned by making such payment and no objection or claim for arbitration shall be entertained or acted upon unless received by the Committee within the 42 days above mentioned.

6. In case of Arbitration the Committee of Lloyd's shall forthwith upon the publication of the Award pay to the Contractor out of the Cash deposit or by realizing or enforcing the security or bail the amount awarded to him, and shall pay the balance (if any) of the deposit to the Depositors whose receipts shall be a good discharge for the same. If the award increases the remuneration the parties mentioned in Clause 12 shall pay the difference to the Contractor.

7. The Committee of Lloyd's shall not be in any way responsible for the sufficiency of any security or bail accepted by them, nor for the default or insolvency of any person giving security or bail.

8. In case of objection being made and Arbitration demanded, the remuneration for the services shall be fixed by the Committee of Lloyd's as Arbitrators or at their option by an Arbitrator to be appointed by them, unless they shall within 30 days from the date of this Agreement receive from the Contractor a written or telegraphic notice appointing an Arbitrator on his own behalf, in which case such notice shall be communicated by them to the Managing Owner of the vessel and he shall within 15 days from the receipt thereof give a written notice to the Committee of Lloyd's appointing another Arbitrator on behalf of all the parties interested in the property salved; and if the Managing Owner shall fail to appoint an Arbitrator as aforesaid the Committee of Lloyd's shall appoint an Arbitrator on behalf of all the parties interested in the property salved, or they may if they think fit direct that the Contractor's nominee shall act as sole Arbitrator; and thereupon the Arbitration shall be held in London by the Arbitrators or Arbitrator so appointed. If the Arbitrators cannot agree they shall forthwith notify the Committee of Lloyd's, who shall thereupon either themselves act as Umpires or shall appoint some other person as Umpire. Any award of the Arbitrators or Arbitrator or Umpire shall be final and binding on all the parties concerned, and they or he shall have power to obtain call for receive and act upon any such oral or documentary evidence or information (whether the same be strictly admissable as evidence or not) as they or he may think fit, and to conduct the arbitration in such manner in all respects as they or he may think fit, and to maintain reduce or increase the sum demanded by the Contractor. The Arbitrators or Arbitrator and the Umpire (including the Committee of Lloyd's if they act in either capacity) may charge such fees as they may think reasonable, and the Committee of Lloyd's may in any event charge a reasonable fee for their services in connection with the Arbitration, and all such fees shall be treated as part of the costs of the Arbitration and Award and shall be paid by such of the parties as the Award may direct. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.

9. The Committee of Lloyd's may in their discretion out of the Cash deposit or out of the security or bail (which they may realize or enforce for that purpose) pay to the Contractor on account before the publication of the Award such sum as they may think reasonable on account of any out-of-pocket expenses incurred by him in connection with the services.

10. The Master is not authorised to make or give and the Contractor shall not demand or take any payment Draft or Order for on account of the remuneration.

11. Any dispute between any of the parties interested in the property salved as to the proportions in which they are to contribute to the Cash deposit or the sum awarded or provide the security or bail or as to any other matter concerning them shall be referred to and determined by the Committee of Lloyd's whose decision shall be final and is to be complied with forthwith.

12. The Master enters into this Agreement as Agent for the Vessel and Cargo and the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.

13. Any of the following parties may object to the sum named in Clause 1 as excessive or insufficient having regard to the services which proved to be necessary in performing the Agreement or to the value of the property salved at the completion of the operations and may claim arbitration viz. :—(1) The owners of the ship (2) Such other persons together interested as Owners and/or Underwriters of any part not being less than one-fourth of the property salved as the Committee of Lloyd's in their absolute discretion may by reason of the substantial character of their interest or otherwise authorise to object (3) The Contractor (4) The Committee of Lloyd's—Any such objection and the Award upon the arbitration following thereon shall be binding not only upon the objectors but upon all concerned, provided always that the Arbitrators or Arbitrator or Umpire may in case of objection by some only of the parties interested order the costs to be paid by the objectors only, provided also that if the Committee of Lloyd's in their public capacity be objectors they shall not themselves act as Arbitrators or Umpires.

14. If the parties to any such Arbitration or either of them desire to be heard or to adduce evidence at the Arbitration they shall give notice to that effect to the Secretary of Lloyd's and shall respectively nominate a person in London to represent them for all the purposes of the Arbitration and failing such notice and nomination being given within 14 days or such longer period as the said Committee of Lloyd's may allow after the notice of objection the Arbitrators or Arbitrator or Umpire may proceed as if the parties failing to give the same had renounced their right to be heard or adduce evidence.

15. Any award, notice, authority, order, or other document signed by the Chairman or Secretary of Lloyd's on behalf of the Committee shall be deemed to have been duly signed by and shall have the same force and effect in all respects as if it had been signed by every member of the Committee.

(4.)—FORM OF A BOTTOMRY BOND.

KNOW ALL MEN BY THESE PRESENTS that I, of master of the of tons burthen, now riding at anchor in having, in the prosecution of a voyage from to put into for the purpose of procuring provisions and other supplies necessary for the continuation and performance of the said voyage, am at this time compelled to take up, on the security of the and her freight, the sum of pounds sterling money of Great Britain, in order to set the said ship to sea, and to the furnishing of her with provisions and necessaries for the said voyage, which sum of merchants, have at my request lent to me, and supplied me with, at the rate of pounds for the said pounds during the voyage of the said from to

NOW KNOW YE that I, by these presents do, for me, my executors and administrators, covenant with the said that the said ship shall, after the date of these presents, with all convenient speed, sail for there to finish the voyage aforesaid. AND I, in consideration of the sum of pounds paid to me by the said at and before the sealing and delivery of these presents, do hereby bind myself, my heirs, executors and administrators, my goods and chattels, and particularly the said ship, the tackle and apparel of the same, and also the freight to become due on the termination of the said voyage, to pay to the said their executors, administrators and assigns, the sum of pounds of lawful British money within thirty days next after the safe arrival of the said ship at the port of from the said voyage.

AND I, do for me, my executors and administrators, covenant with the said their executors and administrators, that I, at the time of sealing and delivering these presents, have power and authority to charge the said ship and her freight as aforesaid, and that the said ship shall at all times after the said voyage be liable and chargeable for the payment of the said pounds until the said charge be fully satisfied according to the true intent and meaning of these presents.

AND LASTLY it is hereby agreed that in case the said ship shall be lost or miscarry on the said voyage, and before her arrival at that then the payment of the said pounds shall not be demanded or be recoverable by the said their executors, administrators or assigns, but shall cease and determine, and the loss thereby be wholly borne by the said their executors and administrators, and this bond be thereupon wholly voided.

IN WITNESS WHEREOF the parties have interchangeably set their hands and seals to three bonds of this tenor and date, one of which being paid the others to be null and void.

(Signed)

Witness }

(5.)—FORM OF LLOYD'S AVERAGE BOND.

An Agreement made this 19 , BETWEEN Master of the Ship or Vessel called the of the first part, and the several Persons whose Names or Firms are set and subscribed hereto, being respectively Consignees of Cargo on Board the said Ship of the other part.

WHEREAS the said Ship lately arrived in the Port of on a voyage from and it is alleged that during such voyage she met with bad weather, and sustained damage and loss, and that sacrifices were made and expenditure incurred which may form a Charge on the Cargo, or some part thereof, or be the subject of a Salvage and/or general average contribution, but the same cannot be immediately ascertained, and in the meantime it is desirable that the cargo should be delivered: NOW THEREFORE THESE PRESENTS WITNESS, and the said Master on his own behalf and on behalf of his owners, in consideration of the agreement of the parties hereto of the second part hereinafter contained, hereby agrees with the respective parties hereto of the second part, that he will deliver to them respectively their respective consignments, on payment of the freight payable on delivery, if any, and the said parties hereto of the second part in consideration of the said Agreement of the said Master for themselves severally and respectively, and not the one for the other of them, hereby agree with the said Master that they will pay to the said Master or the Owners of the said Ship the proper and respective proportion of any general average, or particular or other charges which may be chargeable upon their respective consignments, or to which the Shippers or Owners of such consignments may be liable in respect thereof to contribute to such damage, loss, sacrifice, or expenditure; and the said parties hereto of the second part further promise and agree forthwith to furnish to the Captain or Owner of the said Ship a correct account and particulars of the value of the goods delivered to them respectively, in order that any such general average and other charges may be ascertained and adjusted in the usual manner.

This addition to be made to the agreement in those cases which justify the Shipowner in asking for a deposit.

AND WHEREAS at the request of the Owner of the said Ship the parties hereto of the second part have respectively deposited or agreed to deposit in the Bank of in the joint names of nominated on behalf of the Shipowners and nominated on behalf of such Depositors the sum of £ per cent. on the amount of the estimated value of their respective interests: NOW IT IS HEREBY FURTHER AGREED, that the sums so deposited by the said parties respectively shall be held as security for and upon trust for the payment to the parties entitled thereto of the general average and particular charges payable by the said parties hereto of the second part respectively as aforesaid, and subject thereto upon trust for the said Depositors respectively.

This addition to be made when ad interim payments may have to be made to Trustees.

PROVIDED ALWAYS that the said Trustees may from time to time, pending the preparation of the usual statement, pay to the said parties of the first part in respect of the amounts which may ultimately be found due from the said depositors respectively, and pay or refund to the parties hereto of the second part or any of them in respect of the amounts which may ultimately be found due to them, such sums out of the said deposits as may from time to time be certified by the Adjuster or Adjusters who may be employed to adjust the said *Salvage and/or* general average and/or particular and/or other charges to be a proper sum or proper sums to be advanced by the said Trustees on account of the said amounts. AND IT IS HEREBY DECLARED AND AGREED that any payment or payments on account which shall be made by the said Trustees under or in accordance with the statement or in pursuance of any Certificate to be made or given by the said Adjusters as aforesaid shall discharge such Trustees from all liability in respect of the amounts so paid; and it shall not be necessary for them to inquire into the correctness of the Statement or Certificate. PROVIDED ALWAYS that the deposits so to be made as aforesaid shall be treated as payments made without prejudice and without admitting liability in respect of the said alleged *Salvage and/or* general average and/or particular and/or other charges, and as though the same had been made by the depositors respectively for the purpose only of obtaining delivery of their goods; and in like manner all amounts returned by the Trustees to the depositors shall be received by the latter respectively without prejudice to any claim which the Master or Owners of the said ship may have against them respectively. And nothing herein contained shall constitute the said Adjuster or Adjusters an arbitrator or arbitrators, or render his or their Certificate or Statement binding upon any of the parties.

IN WITNESS

(6.)—WEATHER REPORTS.

FIGURES
TO DENOTE
The Force of the Wind.

0 denotes Calm.

1 .....Light Air.

2 .....Light Breeze.

3 .....Gentle Breeze.

4 .....Moderate Breeze.

5 .....Fresh Breeze.

6 .....Strong Breeze.

7 .....Moderate Gale.

8 .....Fresh Gale.

9 .....Strong Gale.

10 .....Whole Gale.

11 .....Storm.

12 .....Hurricane.

LETTERS
TO DENOTE THE STATE OF THE WEATHER.

b denotes **Blue Sky.**—Very fine weather, when the sky is almost or quite free from clouds, not only overhead, but also on the horizon.

c ..... **Cloudy (detached clouds).**—When blue sky is seen between the clouds; and sun, moon or stars are visible at times.

d ..... **Drizzling Rain.**

f ..... **Foggy.**

g ..... **Gloomy.**—Should be used with caution, and not to indicate "cloudy" or "overcast." which have letters of their own.

h ..... **Hail.**

l ..... **Lightning.**

m ..... **Misty.**—When it is not quite as thick as **f** (fog), but enough to cause objects to be indistinct, and to require the fog signal to be sounded.

o ..... **Overcast.**—When neither sun, moon nor stars are visible for a long period, and the clouds are not detached.

p ..... **Passing showers.**—When between the showers there is fine weather and the wind is steady, that is when there are no squalls.

q ..... **Squally.**—Sudden gusts of wind with or without rain.

r ..... **Rain.**—Steady and continuous.

s ..... **Snow.**

t ..... **Thunder.**

u ..... **Ugly (threatening).**—Should be used with caution.

v ..... **Visibility.**—Only to be used when objects are unusually distinct, as is often the case before rain; it does not mean an ordinary fine day or night when the usual objects are visible, and should rarely be used at night.

w ..... **Wet dew.**

A Bar (-), or (.) under a letter denotes *an Extraordinary Degree*:—thus f, dense fog; f, very dense fog; R, heavy rain; R, heavy and continuous rain.

(7.)—CARRIAGE OF GRAIN.

The National Board of Marine Underwriters of New York issued the following general regulations and instructions in 1899 for the guidance of shipowners, surveyors, &c. :—

General Regulations.

1. The Draft of Water or Free-Board, to be regulated by a scale approved by the Loading Committee. Free-board shall be measured from top of deck at side of the vessel to the water's edge at the centre of the load water-line : Vessels having free-boards assigned by the Rules of the Board of Trade (Marine Department), London, shall not be loaded deeper than permitted by those Rules.

2. Shifting boards must extend from the upper deck to the keelson when grain is carried in bulk. When grain is carried in bags the shifting boards must extend from deck to deck in the between decks, and not less than four feet downward from the beams in the lower hold.

3. Shifting boards referred to in all Rules shall be of two (2) inch yellow pine, or of three (3) inch spruce (or equivalent).

4. All hatch feeders and end bulkheads must be boarded on the inside.

5. The grain must be well trimmed up between the beams and in the wings, and the space between them completely filled.

6. No grain shall be carried in the fore and after peaks except in bags.

7. No coal shall be carried on deck of steamers sailing between the 1st of October and the 1st of April beyond such a supply as will be consumed prior to vessels reaching the ocean.

8. Care must be taken that when grain in bags or other cargo is stowed over bulk grain the bulk grain must be covered with two thicknesses of boards placed athwartships and fore and aft, with spaces between the lower boards of not more than four (4) feet, and between the upper boards of not more than nine (9) inches. Care must be taken that all the bags are properly stowed, in good order, and well filled and that the tiers are laid close.

Steamers.

9. Steamers having water ballast tanks must have them covered with a grain-tight platform made of 2½ or 3 inch sound and dry planks, but this platform may be dispensed with where the top of the tanks are of heavy plates, and precautions are taken against overflow from the bulges.

10. Steamships without ballast tanks, having a cargo platform, in good order, will not be required to fit a grain floor over it, otherwise such grain floor will be required.

11. Vessels carrying small quantities of grain in bulk must have shifting boards to the top of the grain, and the bulk must be properly covered with boards before any other cargo is stowed over it.

12. Single deck steamers with a continuous hold forward will be required to have a closed bulkhead to divide the same. This Rule will also apply to the after hold.

13. Shifting planks must extend from deck to floor where grain is carried in bulk and be properly secured to stanchions, or shored every eight feet of length and every five feet of depth of hold, including hatchways. Shores to be three by eight (3 × 8) inches or four by six (4 × 6) inches.

14. No bulk grain (or seeds in bulk, exoept oats, as hereinafter provided in Rules 35, 36 and 37), to be carried in between decks, nor where a ship has more than two decks, between the two upper decks, unless in properly constructed feeders to fill the orlop and lower hold. Bulk grain may be carried on orlop or third deck below, provided said orlop has wing openings and amidship feeders to feed same. All amidship feeders to have properly constructed shifting boards to top of coamings.

15. Steamers with two or more decks not having sufficient and properly constructed wing and 'midship feeders, will be required to leave sufficient space above the bulk in lower hold not less than 5½ feet, to properly secure it with bags or other cargo; the bulk to be covered with boards as in Rule 8. If an orlop deck has sufficient openings to the lower hold the orlop and lower hold may be considered as one hold and loaded accordingly.

16. Steamers having one deck and beams may carry bulk to such a height as will permit the stowage over it of not less than five tiers of bags except in the extreme ends where four tiers of bags may be sufficient. All bags to be stowed on two tiers of boards as provided for in Rule 8.

17. Steamers with laid between decks must have hatchway feeders, and if the distance in the lower holds, between the forward bulkhead in said hold and the nearest end of the hatchway feeders exceeds twelve (12) feet, then vessel must have a wing feeder on each side provided in the between decks to feed this space. If there are no openings in the between decks for wing feeders five heights of bags must be put on top of the bulk grain from the bulkhead to within twelve (12) feet of the feeders.

The same rule applies when the distance between the after end of the hatchway feeders and the after bulkhead in lower holds exceeds twelve (12) feet.

18. Bags stowed or laid between decks must be dunnaged.

19. Steamers carrying grain in poop or under bridge deck must have such grain in bags and have proper dunnage and shifting boards.

20. Steamers of the type known as "Turret," with single deck or single deck and beams, may load full cargoes of grain in bulk, but must have shifting boards as required in Rules 2 and 3, and if required by Surveyors trimming bulkheads forward and aft extending from deck to floor, or if coming under hatches to top of coaming as directed by the Surveyors, and substantially fitted under their supervision. The loose grain in the end compartments to be secured by not less than four tiers of bags on boards properly laid.

21. Steamers that are partly single deck and partly double deck known as Switchback and as Part Awning Deck Steamers may load all bulk grain in the lower holds of their double deck compartments, providing proper 'midship feeders and wing feeders are fitted, but the space in the between decks around the feeders must be filled with bagged grain or general cargo, but if the vessel is too deep to carry any grain or other cargo on the between decks the feeders are to be shored or properly secured to the satisfaction of the Surveyor.

If there are no openings in between decks for wing feeders and the bulkheads are more than twelve (12) feet away from the nearest end of the 'midship feeders five (5) heights of bags must be put on top of the bulk grain from the bulkheads to within twelve (12) feet of the feeders.

All hatchways used as feeders to have properly constructed shifting boards to the top of the coamings.

22. *Full Cargo Oats.*—Steamers with double bottoms for water ballast may carry a full cargo of oats in bulk; but if with two or more decks must have tight wing and hatch feeders to feed the lower holds and or orlop as provided in Rule 30.

23. *Part Cargo of Oats.*—When the quantity of oats carried in bulk between the two upper decks exceeds 60 % of the capacity of the said deck, the excess over 50 % may be stowed in bulk in compartments fitted with wing shifting boards extending from bulkheads at each end of hold to within four (4) feet of the hatches, one of such compartments shall be the largest between deck compartments; *or* where a steamer has four or more compartments in between decks, oats may be loaded in bulk in all of these compartments if they are provided with wing feeders of increased size to reach from the forward and after bulkhead to within four feet of hatches. The hatch feeders or feeders for lower hold must be capped boxed feeders, five or six feet in depth. All holds are to be so fitted.

24. In single deck steamers oats in bulk may be loaded over heavy grain with proper separation in two compartments, but the grain in all other compartments must be properly secured with bagged grain or other cargo easily handled. This Rule applies also to steamers where some compartments are double and some single deck.

25. If owing to unusual construction of vessels which may necessiate deviation from the foregoing Rules, the Surveyor must obtain the approval of the Loading Committee of the Board.

The Board of Trade issued in 1897 the following :—

Official Notice.—Mediterranean and Black Sea (Merchant Shipping Act, 1894):

Whereas it is provided by section 453 of the Merchant Shipping Act, 1894, that "Where a British ship laden with a grain cargo at any port "in the Mediterranean or Black Sea is bound to ports outside the Straits "of Gibraltar, or where a British ship is laden with a grain cargo on the "coast of North America, the precautions to prevent the grain cargo from "shifting, set out in the Eighteenth Schedule to this Act, shall be adopted "unless the ship is loaded in accordance with regulations for the time "being approved by the Board of Trade."

Now, therefore, the Board of Trade approve the following regulations, viz. :—

1. In the case of single-decked ships loading a grain cargo at a port in the Mediterranean or Black Sea, where no provision is made for feeding the hold, and where, according to the requirements of the Eighteenth Schedule of the said Act, one-fourth of the grain carried in any one compartment, bin, or division must be in bags, the Board of Trade have approved a regulation that the whole fourth, or any part of the fourth, of

the compartment, bin, or division which would, according to the requirements aforesaid, be stowed with grain in bags, may in lieu thereof be stowed with bales of cotton, bales of grass, or bags of flour, or other suitable cargo; provided always that the substituted cargo be supported on suitable platforms laid on the grain in bulk and be so stowed as to prevent the grain from shifting.

2. In the case of ships having two decks, oats, cotton seed, or barley, may be carried in bulk in the tween decks, provided that:—

(*a*) Grain-tight feeders be fitted from the lower hold through the hatches to the uppermost deck: such feeders to contain not more than six per cent. and not less than three per cent. of the quantity carried in the hold or compartment they feed. These feeders must not interfere with or decrease in any way the two per cent. which is required to feed the grain carried in the 'tween decks.

Or (in lieu of the regulation contained in the paragraph (*a*) above) may be substituted the following:—

(*b*) That the between deck hatches shall not at any time be put on; and

(*c*) That strakes of the deck be lifted, or if the deck is an iron deck, sufficient openings be made through the deck in the wings, which with the open hatches shall admit of the cargo in the between decks feeding the lower hold.

The regulations contained below shall also be observed whether the ship is loaded under the regulation contained in paragraph (*a*) above, or in accordance with the regulations contained in the paragraphs (*b*) and (*c*) above, that is to say,

(*d*) There shall be longitudinal grain-tight shifting boards in accordance with clause 3 of the Eighteenth Schedule of the said Act, and the grain shall be properly stowed, trimmed, and secured, as required by Clause 4 of the said Schedule.

(*e*) Feeders shall be fitted to feed the grain carried in the between decks, such feeders to contain not less than two per cent. of the compartments they feed. If strakes of the deck be lifted, or sufficient openings are left to enable the grain in the 'tween decks to feed the lower hold, then it is obvious that the feeders must contain at least two per cent. of the compartments they feed, *i.e.*, the 'tween decks, plus the lower hold.

(*f*) The space in the 'tween decks in which the grain in bulk is carried shall be bounded at each end by grain-tight transverse bulkheads or partitions extending from deck to deck.

(*g*) The ship shall not be overloaded.

3. If at any time it should appear to the Board of Trade that the above regulations or any of them insufficiently provide for the safety of the ship and should therefore in their opinion be revoked and withdrawn; or that they need alteration; the Board of Trade will revoke, withdraw, or alter them accordingly.

INGRAM B. WALKER,
Assistant Secretary.

COURTENAY BOYLE,
Secretary.

Marine Department, Board of Trade, April, 1897.

(8.)—THE "HARTER ACT" (1893.)

(Approved 13th February, 1893).

AN Act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandize or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping documents any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandize or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

Sec. 2. That it shall not be lawful for any vessel transporting merchandize or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence, to properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents or servants to carefully handle and stow her cargo, and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided.

Sec. 3. That if the owner of any vessel transporting merchandize or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, her owner or owners, agent or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of the said vessel; nor shall the vessel, her owner or owners, charterers, agent or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

Sec. 4. That it shall be the duty of the owner or owners, masters, or agent of any vessel transporting merchandize or property from or between ports of the United States and foreign ports, to issue to shippers of any lawful merchandize a bill of lading or shipping document, stating among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandize or property delivered

to and received by the owner, master, or agent of the vessel for transportation, and such document shall be *prima facie* evidence of the receipt of the merchandize therein described.

Sec. 5. That for a violation of any of the provisions of this Act the agent, owner, or master of the vessel guilty of such violation, and who refuses to issue on demand the bill of lading herein provided for, shall be liable to a fine not exceeding two thousand dollars. The amount of the fine and costs for such violation shall be a lien upon the vessel, whose agent, owner, or master is guilty of such violation, and such vessel may be libelled therefore in any district court of the United States, within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation and the remainder to the Government of the United States.

Sec. 6. That this Act shall not be held to modify or repeal sections forty-two hundred and eighty-one, forty-two hundred and eighty-two, and forty-two hundred and eighty-three of the Revised Statutes of the United States, or any other statute defining the liability of vessels, their owners, or representatives.

Sec. 7. Sections one and four of this Act shall not apply to the transportation of live animals.

In England a number of decisions have been given, involving the construction of certain terms or phrases in this Act.

(a) A quantity of cotton seed oil cake was shipped at New Orleans on board the ss. *Glenochil* under Bs/L which provided that the shipment was to be subject to all the terms and provisions of, and all the exemptions from liability in the Harter Act. After the arrival of the vessel at her port of destination (London), and during the discharge of the cargo, it became necessary to stiffen the ship. For this purpose the engineer ran water into a ballast-tank, but negligently omitted first to ascertain the condition of the sounding-pipe and casing, which had, owing to heavy weather during the voyage, become broken. The water found its way thereby into No. 2 Hold and damaged the oil-cake. On action brought by the indorsees of the Bs/L, *held*, by Sir F. Jeune and Barnes, J., that the shipowner was not liable as the damage resulted from a fault in the "management" of the vessel: that the operation of the exception as to "management" was not limited to the period during which the vessel was at sea, but extended to the time occupied in the discharge.

The Glenochil (1895).

"Management."

(b) Butter was shipped on board the ss. *Minneapolis* at New York for carriage to London under Bs/L, which incorporated the "Harter Act." The butter was carried in four out of six insulated chambers forming part of refrigerating apparatus bolted to the ship and connected with her engines, the other two chambers being used for the ship's provisions during the voyage. The butter was delivered in London in a damaged condition resulting from the negligence of one of the ship's engineers in the management of the refrigerating apparatus whereby in the course of the voyage the temperature of the chambers was allowed to rise too high. *Held*, upon the facts, and especially as the refrigerating apparatus was used for the ship's provisions and not exclusively for the butter, that the apparatus must be regarded as being part of the ship, and that therefore the mismanagement of the apparatus was mismanagement of the ship, so that the neglect to keep the chambers sufficiently cooled during the voyage was a fault or error "in the management of said vessel" within the meaning of Sec. 3 of the Bs/L, and that the defendants were consequently excused. The decision of Kennedy, J., was affirmed on appeal.

The Minneapolis (1902).

"Management."

The Rossmore (1895).

"Due diligence."

(c) Through the negligence of the ship's carpenter in failing to properly secure a port hole before the ship sailed on her voyage from Baltimore to Liverpool water entered the hold and damaged the cargo. The shipowners contended they were freed from liability by the terms of Sec. 3 of the Harter Act. *Held* in the Court of Appeal that to exempt the shipowner from liability it must be shown not merely that he personally had exercised due diligence to make the ship seaworthy but that those persons employed to act for him had also exercised due diligence in relation to the same matter, and that he, the carpenter, having been negligent, rendered his employer, the shipowner, liable.

The Tolosa (1903).

Seaworthiness

(d) The shipowners received on board their ss. *Tolosa* a parcel of cotton in bales for carriage from Wilmington to Bremen. After the goods were on board the ship's engineer had occasion to open a sluice door in a watertight bulkhead in the lower part of the ship. He shortly afterwards shut the sluice door, but failed to screw it down so closely as to make it watertight. He subsequently proceeded to fill one of the ballast tanks, for which purpose he opened a sea cock in the ship's side to allow the water to flow in. The water, on its way from the sea cock to the ballast tank passed through a valve chest, the joint between the lid and body of which had been packed in the ordinary way with cotton to make it watertight. This joint had been remade shortly before the goods in question were put on board, and it had been imperfectly done. When the tank was full the engineer screwed down the sea cock but owing to the accidental presence of some hard substance the screw valve was prevented from bedding down closely on to its seating and the sea cock was left partially open, with the result that the continued pressure of the water forced out the defective packing of the valve chest and the water flowed through the joint down into the lower part of the ship, where it passed through the sluice door into the cargo hold and damaged the plaintiff's goods. *Held* by Channell, J., that the defective fitting of the sea cock and of the sluice door, being defects which came into existence after the goods were loaded, were not breaches of the implied warranty of the fitness of the ship to receive the cargo, but that the defective packing of the valve chest, being an existing defect at the time of the loading of the goods was a breach of warranty.

The warranty, which is *prima facie* implied in a contract for the carriage of goods by sea, that the ship is fit for the reception of the cargo is an absolute warranty; and the incorporation in the B/L of the provisions of the Harter Act does not cut down the oblgation of the shipowner in that respect to an obligation to exercise due diligence to make the ship fit for that purpose.

The above warranty is a warranty only as to the condition of the ship at the time of loading; it does not continue in force after the goods are once on board.

In the U.S. an immense number of cases are reported in which points arising under the Act have been adjudicated upon. A selection of such cases has been made, from which the limit of cover afforded to the shipowner will be gathered with something like reasonable certainty.

Calderon v. *Atlas S.S. Company.*

(1). Goods were shipped in New York by the *Alisa* for delivery at Savanilla. It was customary for vessels of the Atlas Line, to which the ship belonged, to touch at Southern ports in the following order: Kingston, Savanilla, Carthagena, Port Limon, and thence back direct to New York. The steamer discharged cargo at Savanilla, and the libellant's goods were overlooked and carried on, and there being no other means of sending them back to Savanilla after the non-delivery was discovered, they were brought back to New York and re-shipped by another vessel of the Line, the *Alvo*, which foundered at sea before reaching Savanilla. The Bill of Lading provided that: "In case any part of the goods cannot be found for delivery during the steamer's stay at the port of destination, they are to be forwarded by the first opportunity, when found, at the Company's expense, the steamer not to be held liable for any claim for delay or otherwise," and incorporated the Harter Act.

In the Supreme Court Mr. Justice Brown said: "Both the District Court and the Court of Appeals *held* the Company to be liable under Sec. 1 of the Harter Act. It was clearly the duty of the master of the vessel before leaving Savanila to examine the manifests or other memoranda of the vessel to ascertain whether the portion of the cargo consigned to that place had been delivered, and if not, to search for the missing consignment before leaving the port. His failure to do this was obviously a breach of his general obligation to deliver his cargo to its consignee, and it is exceedingly doubtful whether, even in the absence of the Harter Act, the provision in the B/L would have excused him. But *as the stipulation in the B/L was one which the Harter Act prohibited, it is only necessary to refer to this Act to hold the Company chargeable with negligence.* The words 'cannot be found' would seem to apply to a case where the goods had been misplaced, and an effort has been made to find them which has proved unsuccessful, and not to a case where no attempt whatever was made to deliver them. But however this may be, we are clearly of opinion that provisions of Sec. 1 of the Harter Act supersede and over-ride this stipulation in the B/L, particularly as it is expressly provided that the agreement was made with reference to, and subject to the provisions of the Act."—(64 *Fed. Rep.*, 874; 35 U.S. *App.*, 587).

Over-carriage of goods.

(2). Exceptions in a B/L of "damage by stowage, leakage, etc., even though caused by the negligence of the master," coupled with a provision that the contract should be governed by the law of the flag (English) under which law the exceptions would be valid, cannot be enforced by the Federal Courts, because in conflict with Sec. 1 of the Act: and that is so though the contract was made in Buenos Ayres between shippers there and the master of a British ship. On appeal it was held that the stipulation quoted did not relieve the owner of the steamship, such a stipulation being against the public policy of the U.S., and therefore not enforceable by its Courts, notwithstanding the stipulation for English law. The Court added:—"In this view of the case, it is unnecessary to decide whether the prohibitions of the Harter Act apply to a B/L issued at a foreign port."—82 *Fed. Rep.*, 471).

Botany Mills v. *Knott.*

Law of the flag.

(3). Exceptions from negligence contracted for in a foreign port on a foreign vessel, though valid where made, will not excuse torts and consequent damage within the U.S. territorial jurisdiction. A clause exempting the carrier from liability for any act, neglect, or default of its servants, though made in Belgium, and authorised by the Belgian law, cannot be enforced where both parties to the contract are citizens of the U.S., and the place for the completion of the contract is within the U.S.—94 *Fed. Rep.*, 885-887).

The Kensington.

(4). Where a charter party contained an express warranty that a vessel should be "fitted with shifting boards and bulkheads suitable for carrying asphalt cargo safely, to be done by owner's agents, but at charterer's expense," and the bulkhead broke down from insufficiency, it was *held* that though the owner's agents used due diligence in directing the master to shipwrights of high repute, who made the bulkhead, the Act was inapplicable owing to the express warranty.—(73 *Fed. Rep.*, 852).

The San Domingo.

(5). A libel was filed against the steamship *Isola di Procida*, to recover damage for the fall in price of a shipment of brimstone, between the times when the shipment would have arrived if the false date in the bill of lading had been as represented and the time when the shipment actually did arrive. It was *held* that "under the rule of the Federal Courts a master has no power to bind the owners of the ship by a false bill of lading, whether the falsity is in relation to the amount of goods shipped or the date of shipment, and this rule is not changed by the provisions of the Harter Act. Such Act subjects a person guilty of a violation of its provisions respecting bills of lading to a fine, which is made a lien on the vessel, but does not make the vessel liable for the damages occasioned thereby." The libel was dismissed.

The Isola di Procida (1902).

(6). The ss. *Oneida* started on her voyage from Charlestown with a list of 8 or 9 degrees, which increased to such an extent, in consequence of her improper loading, that it was imprudent to proceed, and she put into the port of New York in distress. Having opened a port to readjust the cargo, while lying at a pier, the ship gave a sudden lurch, which brought the port under water, and she sank, damaging the cargo. *Held* that the damage was attributable to her initial instability, which rendered her unseaworthy at the beginning of the voyage, and for the consequences of which the owners were not exempted from liability by the Harter Act. Decree affirmed.

The Oneida (1905).

Bradley v. Lehigh Valley Co. (1907).

(7). The libelant was assignee of the shippers of a cargo of wheat to be transported by the respondents under a through bill of lading from Toronto to a vessel in New York. While the wheat was being transported upon a canal boat in tow of one of respondents' tugs or after the tug left the canal boat in a slip, the canal boat sank. The libelant alleged that respondents were liable for negligent towage or for the breach of its obligation as common carrier. As a defence respondents pleaded exemption under the Harter Act but did not affirmatively prove that the canal boat was seaworthy. *Held* that a carrier by water can only avail himself of the exemptions from liability for errors of management and navigation, provided by the Harter Act, by affirmative proof that the vessel was seaworthy at the beginning of the voyage, or that due diligence had been used to make her so, and such affirmative proof cannot be supplied by inferences or presumptions.

The Seneca (1908).

(8). Action was brought by the assignee of the consignee of a shipment of bristles against the owners of the ss. *Seneca*, for short delivery. The bristles were abstracted from the boxes while on board the vessel. *Held* that robbery or theft of cargo by those on board cannot be made a ground of exemption from liability of a vessel under the Harter Act.

The Jason (1908).

(9). The ss. *Jason*, sailing from Cienfuegos to New York, upon her fourth trip under same command and conditions, ran upon a reef, owing to negligent navigation and the use of an inaccurate chart. The steamer jettisoned part of the cargo, and the libelant (cargo owner) attempted to recover contribution in general average from the shipowners. *Held*, that where part of the vessel's cargo was jettisoned on account of her stranding, solely by reason of her negligent navigation, while Section 13 of the Harter Act exempts the vessel and owners from liability to the cargo owner in tort for his loss, it does not affect the right of the cargo owner to maintain a suit against the vessel for a general average contribution in consequence of such loss. The shipowners were not allowed contribution for salvage expenses, as the loss was due to her own negligence.

The Fri (1907).

(10). The ss. *Fri*, while on a voyage from Carthagena to Cienfuegos, ran on to a well-known reef, whereby the cattle on the steamship had to be thrown overboard. The shipper libelled the ship for the value. The cause of the accident was the negligence of the master, an experienced man, in failing to have known of certain westerly currents, although he had the means of knowledge at hand. *Held*, that when a Charter Party gives to the charterer the full capacity of the ship, the owner is not a common carrier, but a bailee to transport as a private carrier for hire, and the Harter Act has no application: a stipulation exempting the ship from liability will be enforced, as it was a contract made in a foreign port, being valid there, for a voyage of a foreign vessel between foreign ports. In such a case it is not against public policy, and United States Courts will enforce it. The vessel held not liable, reversing the District Court.

The Tampico (1907).

(11). An action in rem was instituted against the ss. *Tampico* to recover damages for injury to a shipment of powder, through the alleged negligence of the steamer's master or crew during a voyage from Seattle to Solomon, Alaska. The bill of lading, under which the powder was shipped contained the following clause, "it is agreed that no lien shall attach to any of the vessels employed in the performance of this contract for any breach thereof, but such lien is expressly waived." The libelant claimed that this stipulation could not be enforced. *Held* that Section 1. of the Harter Act, which provides that any clause of a bill of lading or shipping receipt for the transportation of merchandise or property from or between ports of the United States and foreign ports, whereby the vessel owner, master, or agent shall be relieved from liability for loss or damage arising from negligence, etc., "shall be null and void and of no effect," applies to any shipment from ports of the United States whether a foreign or domestic port and is broad enough to render void a clause in the bill of lading by which the shipper waives any lien upon a vessel for a breach thereof, where it is set up in defence to libel for loss or damage to cargo and would be void also as against public policy.

What constitutes "due diligence."

(12). Cargo carried in the No. 1 hold of a steamship was damaged by water which escaped from the forepeak ballast tank into the hold, through the giving

way of a rivet in the bulkhead, owing to a latent defect in the metal. The steamship was a new one, and the defect, such as it was, existed at the time of original construction, The giving way of the rivet was not due to sea perils, or to any fault or error in the management or navigation of the ship, and it was *held* that the loss was not within the exception of "latent defects," because effect can be given to such an exception only if the ship is seaworthy at the inception of the voyage. Sec. 3 was *held* not to modify the warranty of seaworthiness, except in a case where the damage is from one of the causes enumerated in that Section. Mr. Justice White, in dealing with this point, said: "The exemption of the owners or charterers from loss resulting from 'faults or errors in navigation or in the management of the vessel.' and for certain other designated causes, in no way implies that because the owner is thus exempted when he has been duly diligent, that thereby the law has also relieved him from the duty of furnishing a seaworthy vessel. The immunity from risks of a described character, where due diligence has been used, cannot be so extended as to cause the statute to say that the owner when he has been duly diligent is not only exempted in accordance with the tenor of the statute from the limited and designated risks which are named therein, but is also relieved, as respects every claim of every other description, from the duty of furnishing a seaworthy ship."

The Carib Prince

(13). A steamship capsized and was lost by reason of her instability with a deck load and the improper distribution of her under-deck cargo. The failure to load the vessel in such a manner as to secure reasonable and necessary stability was the fault of the stevedore, and also of the master and first officer, under whose supervision the ship was laden. *Held* that this negligence was in law imputable to the owner so far as to render inapplicable the exemption from liability provided by Sec. 3 where the owner has exercised due diligence to make the ship seaworthy.

The Colima

(14). A three-masted centreboard schooner on a voyage from Cardenas to New York, and five days out, met a dead calm in a heavy swell of sea, during which she rolled considerably and sprang a leak, taking in three feet of water in a short time. When a breeze sprang up later the leak ceased. The evidence left no doubt that the leak was in the centre-board seams in the botton of the schooner. *Held* that so heavy a leak so soon after leaving port due to mere rolling in a calm, was inconsistent with reasonable fitness for the voyage, or with that necessarily careful inspection of the seams about the centre-board which due diligence under the Act required, and that the vessel was liable for the damage.

The Millie Bohannan.

(15). A steamer on a maiden voyage from Hamburg to New York, was discovered in mid ocean to have a leaking port near the water line, by which cargo in one of the compartments was damaged. The port could not be screwed tight so as to stop the leak, until the outside iron blind was removed; when that was removed, the port was screwed water tight. Upon arrival, the brass ring of the glass door was found to be bent inwards at the top and bottom a sixteenth of an inch on a vertical axis. It was claimed that this bend was caused by contact with the stone gateways in departing from Havre. Upon conflicting evidence, the Court found that this contention was not sustained, and as there was no proof of any test or inspection of this port prior to the sailing of the new ship on her first voyage, it was *Held* (1) that due diligence had not been exercised by the owners; (2) that the leaky condition of the port near the water line constituted unseaworthiness on sailing, and (3) that the ship was liable for the consequent losses.

The Phœnicia.

(16) Section 3 of the Harter Act does not merely require due diligence on the part of the owner himself, nor in respect to construction only, but on the part of those to whom the owner has entrusted the duty, and in respect not only to construction, but also to inspection, maintenance and repair. Section 3 of the Harter Act does not exempt owners from liability for the consequences of unseaworthiness, even though due diligence was exercised to make her seaworthy.

The Ninfa (1907).

(17) A libel was filed by Marine Insurance Companies to recover damages paid by them to the owner of a cargo of flax seed which was injured by water while being conveyed from Duluth to Buffalo by the steamship *C. W. Elphicke.* The District Court found the ship liable. It was contended for the appellant that the exemption from liability provided for in Section 3 of the Harter Act is

The C. W. Elphicke (1903).

applicable to a ship unseaworthy at the inception of the voyage if it appears that her owner has exercised due diligence to make her in all respects seaworthy. Coxe, J., said :—"This is not the construction placed upon the Act by the Supreme Court in the *Carib Prince*. We conclude, therefore, that it was the duty of the carrier to provide a seaworthy vessel at Duluth for the reception of the cargo, that is, reasonably fit to carry the flax seed, having in view the time of the year and the weather to be fairly expected during the voyage." As the ship was proved unseaworthy the decree for libellant was affirmed.

The Cygnet (1903).

(18.) A tug with a barge, passing down the Merrimac River at night, ran into a pier owing to the negligent navigation of the tug and the gross negligence of its captain. The tug attempted to exempt its liability under Section 13 of the Harter Act. *Held*, the Harter Act cannot be invoked to relieve a vessel from liability for loss of cargo resulting from the gross fault or negligence of the master, sufficient to raise a presumption of his incompetency, merely upon a showing that the owners had no knowledge or reason to believe that he was incompetent, that being insufficient to establish the "due diligence" required by the statute, the burden of proving which, under such state of facts, rests on the vessel.

The Brilliant (1905).

(19). The ship *Brilliant* was equipped with a tank, which could be used either for cargo or water ballast, and into this tank extended a pipe 5½ inches in diameter, reaching nearly to the bottom and having its lower end open. This pipe could be connected by valves with the sea, and was used both for filling the tank and pumping it out. During a voyage on which sugar was stowed in the tank, the valve closing such pipe became obstructed by a stick, which the evidence tended to show was drawn into the pipe from the tank when the pumps were being tried; and sea water entered through the opening, which damaged the cargo. *Held*, that the failure to place a rose or screen on the lower end of the pipe to prevent the entrance of foreign substance which might foul the valve was a failure to exercise "due diligence" in equipment to make the ship seaworthy at the beginning of the voyage, and which rendered her liable for the damage under Section 13 of the Harter Act.

The Indrani (1910).

(20) The master of the steamship *Indrani* while discharging cargo tipped the vessel's head in order to examine her propeller. This was done by letting sea water through the sea-cock and other intermediate valves into the No. 1 ballast tank. Cargo was stowed over this tank and just forward of it in the forepeak. Water in fact got into the forepeak and damaged the cargo. The pipe used for pumping out the forepeak was found to be broken. The water from No. 1 tank passed through this break into the forepeak where cargo was stowed. On the trial the judge found those in charge of the ship negligent in not discovering this leak when No. 1 tank was being filled or for several days thereafter. He also found the ship seaworthy at the beginning of the voyage. *Held* that a shipowner is not deprived of the exemption of section 3 of the Harter Act against liability for injury to cargo resulting from the broken suction pipe because it was not proved that the pipe had been inspected at the commencement of the voyage where it is shown that it was in good condition after the voyage commenced, that the break was new, and it was sufficiently accounted for by the straining of ship during very rough weather on the voyage. *Held* further that the tipping of the vessel was an act of management within Section 3 of the Harter Act, having nothing to do with the discharge of cargo, and the vessel was not liable for injury caused thereby.

The O. M. Hitchcock (1907).

(21). The respondent was transporting a shipment of cotton from Galveston to the Phœnix Line in New York. During such transportation part of the cotton had been loaded upon the lighter *O. M. Hitchcock*, lying moored to a pier in New York harbour. During the night the lighter careened, the lines not being let out as the tide went out, and the cotton on the lighter was damaged, for which damage the owners of cotton sued As one defence respondent claimed exemption under the Harter Act. *Held*, that Section 13 of the Harter Act, which exempts the owner of any vessel transporting property from liability for loss or damage from errors in navigation if vessel is seaworthy, properly equipped, manned and supplied, applies only to a vessel after the voyage has been commenced, and cannot be invoked by an owner to relieve him from liability for loss of cargo through the careening and sinking of a vessel at the pier before she was fully loaded, due to the negligence of a watchman in failing to adjust her lines and permit her to drop with the tide.

What constitutes default in "Management."

(22). Chemicals and rags being damaged by sea water from leaks in a steamer's ballast tank, which was found sprung, and the rivets started and broken after heavy weather.—*Held*, upon evidence of first class construction, careful inspection and good stowage, that the leak was sufficiently explained by the heavy weather that preceded it, and that the vessel was seaworthy. Also *held* that lack of proper attention to the pumps, which might have earlier disclosed and prevented the damage, was negligence in the management of the ship, for which the ship was not liable under the Harter Act. Also *held*, upon proof that the sluice valve in the bilges connecting compartments four and five was not water-tight, that this fact did not constitute unseaworthiness, even if it existed at the commencement of the voyage, because not a failure in any necessary requirement, and because any leak therefrom would be sufficiently guarded against by proper attention to the pumps. *The British King.*

(23). The omission to close a valve in a pipe line through which a ballast tank was being emptied at sea, in consequence of which the water ran off from the pipe line through a branch into another compartment, and damaged cargo stowed there, was held to be a fault in the management of the ship within Sec. 3. *The Mexican Prince.*

(24). On a voyage from Buenos Ayres to New York, via Pernambuco and Para, wood was properly stowed in the No. 1 between decks of a steamship. At Pernambuco, where the ship had liberty under the bill of lading to load further cargo, wet sugar in bags was properly stowed in the No. 2 between decks. The ship was so constructed that when trimmed by the stern, or of an even keel, the drainage from the sugar flowed aft, and down the sluice pipes into the bilges. The ship proceeded thence to Para, also a permitted port, and during this stage of the voyage there was no damage to cargo. By reason of the change in trim of the vessel at Para, owing to discharge of cargo destined for that port, the ship became trimmed by the head, and the sugar drainage in consequence flowed forward, and damaged the wood in No. 1 between decks. At a later stage of the voyage, the improper trim of the vessel was corrected, after which there was no further damage. The master had the means of keeping the ship properly trimmed with reference to the different kinds of cargo. *Held* that damage was not due to a cause included in the term "management," but that as the changes in trim were incidental to the loading and stowage of the cargo, the damage must be ascribed to "stowage" and want of care, and hence must be made good by the ship. *Botany Mills* v. *Knott.*

(25). The opening of the sluice gate designed to empty the bilges was neglected during a period of heavy weather. The accumulating water overflowed the bilges and damaged cargo properly stowed in the holds. If the sluice gate had been regularly opened and the pumps applied, the damage would have been avoided. *Held* that the neglect to open the sluices was a fault in the "management of the ship," and that the ship and owners were exempted thereby from liability for the resulting damage. *The Sandfield.*

(26). A glass side port in the No. 2 'tween decks (the steerage quarters) of a cargo vessel was broken in heavy weather, shortly after leaving port. An iron blind or dummy, provided for closing over the port, and which, if closed, would have prevented the entrance of water, notwithstanding the breaking of the glass, was left open at the commencement of the voyage in accordance with the usual custom on the ship. Water entering the steerage flowed aft, damaging cargo in the adjacent between decks and overflowed the hatchway, also damaging cargo in the lower holds. There was ready access to the steerage from the main deck by a stairway by lifting the tarpaulin of the hatch and raising one or two of the hatch covers. The District Court found that there was no intention of entering the steerage to close the port during the voyage, and that accordingly the ship was unseaworthy for the voyage, but the owners had exercised due diligence to make the ship seaworthy, and the omission to close and secure the iron blind was a fault in the management of the ship within Sec. 3, and that the ship was thereby exempted from liability. The Court of Appeals *held* that in view of the ready access to the steerage, and of some evidence that it was intended to enter the steerage during the voyage, the omission to close the iron blind before sailing did not leave the ship unseaworthy, and that the failure to close the blind on the approach of a storm, constituted a fault in the management within the third Section, and on that ground affirmed the decree. *The Silvia.*

The Supreme Court of the United States affirmed the decree of the Court of Appeals upon substantially the same grounds. Mr. Justice Gray, in speaking for the Court, defined management as follows: "This case does not require a comprehensive definition of the words 'navigation' and 'management' of a vessel, within the meaning of the Act of Congress. They might not include stowage of cargo, not affecting the fitness of the ship to carry her cargo. But they do include, at the least, the control during the voyage, of everything with which the vessel is equipped for the purpose of protecting her and her cargo against the inroads of the sea; and if there was any neglect in not closing the iron covers of the ports, it was a fault or error in navigation or in the management of the ship. This view accords with the result of the English decisions upon the meaning of these words."

The Etona.

(27). A steamship anchored by a local pilot in the Amazon, dragged her anchor, owing to the great force of the current in the river, while she was unloading part of her cargo, and grounded upon a sand bank, which caused her to take a strong list, in consequence of which the drainage from some wet sugar which had been properly stowed upon the watertight 'tween decks of the ship, ran over the 'tween decks hatch combings, and damaged the cargo in the hold below. *Held* that the selection of a place for anchoring, from which the stranding resulted, was a part of the "navigation and management of the ship," and that the ship was not liable for the damage. Brown, J., in the course of his judgment, said: "This case has to be decided according to our law. I cannot find it to be negligence in the ship to stow sugar in the 'tween decks over hides in a ship with a perfectly tight iron deck, and coamings a foot high, and with scuppers sufficient for all drainage that could be anticipated. . . . If, however, the ship could properly have been held liable for negligence, the evidence on her behalf shows the exercise of 'due diligence by the owners to make her in all respects seaworthy,' so as to bring both the vessel and her owners within Sec. 3 of the Act, and I do not feel authorised to limit the application of this Act to vessels in the United States alone."

The Strathdon.

(28). The improper use of the donkey boiler, overheating the donkey boiler flues so that fire was communicated to cargo in the 'tween decks above it (the Court having found that the flue, its fittings and arrangements were reasonably fit and proper), was *held* to be a fault in the management of the ship within the third section.

The Wildcroft (1901).

(29). In the month of April, 1901, the *Wildcroft*, having discharged a cargo of coal at the port of Havana, proceeded to Cardenas and Matanzas, where she loaded sugar in four holds to be delivered at Philadelphia. On the voyage a severe storm was encountered and some damage was done by salt water finding its way into No. 3 hold because of the tearing away of the tarpaulins over the hatches and the washing off the starboard ventilator cover. At the hearing in the District Court the claim for damages, because of injury alleged to have been caused to the sugar in holds Nos. 1 and 2, was waived by the libellant it being obviously damage caused by perils of the sea. The injury to the cargo of sugar in holds Nos. 3 and 4 of the vessel by means of fresh water was occasioned after the ship's arrival at Philadelphia. The damage took place on Monday, April 29th, when because of the letting in of fresh water for the purpose of filling the engine-room tank, which was accomplished by opening a valve on the ship's side which admits water from the river, and because of an open cock to a valve in the connection from the tank filling pipe to the service or feed donkey, connecting with the distribution box, water flowed from the tank pipe through this open cock to the distribution chest and down a pipe and filling through a valve, which must have also been held open in some way so that water flowed into this suction pipe leading into No. 3 hold, and flowing thence into No. 4 hold, damaged the cargo of sugar therein contained. If these cocks had been properly closed, the water could not have found its way into the holds and inflicted the damage. The sea cock had not been open from the time the cargo was put on board in Cuba until, as just stated, on the morning of the 29th of April, at Philadelphia.

Mr. Justice Day, in delivering the judgment of the Supreme Court, said: "In order to have the benefit of the exemptions provided in the Harter Act, it was incumbent upon the shipowner to prove that the vessel was seaworthy at the time of beginning the voyage, or that due diligence had been used to make her so. It therefore became incumbent upon the shipowner to show that a due and

proper inspection had been had and the vessel ascertained to be in all respects seaworthy and fit to carry the cargo which she had undertaken to transport, or that due diligence to that end had been used. As we understand the findings of both the District Court and the Court of Appeals, the testimony in this regard introduced by the shipowner was sufficient, in the judgment of those courts, to establish that the vessel was seaworthy in the respects involved, and that an inspection had been had, and the valves and connections, the negligent use of which was productive of this injury, found in due order at the beginning of the voyage. This finding of two courts will ordinarily not be disturbed, and is usually accepted by this court as conclusive. The testimony was sufficient to show that an inspection was had, and everything found in order at the beginning as well as during the voyage, and from the record we reach the conclusion, sustained by the findings of the courts below, that the ship was seaworthy in all respects a the beginning of the voyage, and it was a careless and recent opening of the valve or valves, shortly before the fresh water was let in, which resulted in the damage complained of. We are very clear that this is not a case where the findings of the courts below can be disturbed, as was our conclusion in the case of the *Southwark* relied upon by the petitioner, where it was shown that the damage inflicted was the result of unseaworthiness in respect to a condition which a proper inspection of the vessel at the beginning of the voyage would have discovered and remedied. We, therefore, reach the conclusion that the decree of the Circuit Court of Appeals should be affirmed, and but for its construction of the rule of evidence in cases of this kind this opinion might well end here. But we are unable to agree with the views expressed in the opinion of the learned Circuit Court of Appeals to the effect that where a shipowner seeks the protection of the immunity afforded by the Harter Act under Sec. 3, reliance may be had upon the presumption of law that the vessel was seaworthy at the beginning of the voyage, and that it is only in cases of conflicting proof that the burden is imposed upon the shipowner, of establishing by testimony the seaworthiness of the vessel, or due diligence in that behalf, in order to have the benefit of the act. We think this construction of the law is opposed to the terms and policy of the act and contrary to the decisions of this court heretofore announced, from which we see no occasion to depart. The relief afforded by the third section of the Harter Act to the owner of a vessel, transporting property, is purely statutory. In the case at bar there could be no question as to the liability of the vessel's owner from the established facts of the case, but for the immunity afforded by that act. To permit a cargo of sugar to be injured by the introduction of fresh water in the manner shown, but for the provision of this act, would have made a case of clear liability against the owner, and where the statute has given immunity against such loss by reason of error in navigation or management, it does so upon the distinct condition that the owner shall show that the vessel was in all respects seaworthy and properly manned, equipped and supplied for the voyage; or, if this cannot be established that he has used due diligence to obtain this end. The discharge of this duty is not left to any presumption in the absence of proof. It is the condition precedent, compliance with which is required of the vessel owner in order to give him the benefit of the immunity afforded by the act. The reason for requiring this proof by the owner is apparent. He is bound to furnish a seaworthy and properly equipped ship for the purpose of the voyage. Whether he has done so is a matter peculiarly within his own knowledge. The inspection which he can give, but which the shippers cannot give for lack of opportunity, will establish whether this duty has been complied with. The whole matter is in the control of the owner. The law says in substance, that when the owner can show that he has discharged this duty he shall be relieved from errors of navigation and management on the voyage, over which he has not such direct control. It is not a case where there is either the necessity or propriety of resorting to presumptions. It is only when he has discharged the burden which the law imposes upon him, and shown that he has furnished a vessel, fit and seaworthy, or has used due diligence to that end, that the law relieves him of the liability which he would otherwise incur. This construction of the statute has been more than once announced in the decisions of this court; recently in International Navigation Company v. Farr, 181 U.S., 218 226, in which this court, speaking through Mr. Chief Justice Fuller, said: "We repeat, that even if the loss occurred through fault or error in management, the exemption cannot be availed of unless the vessel was seaworthy when she sailed, or due diligence to make her so had been exercised, and it is for the owner to establish the existence

of one or the other of these conditions." This case was quoted and followed in the still later case of the *Southwark*, 191 U.S., 1, in which it was reiterated that the burden was upon the vessel owner to show by reasonable and proper tests that the vessel was seaworthy and in a fit condition to receive and transport the cargo undertaken to be carried, and that, if, by failure to adopt such tests and furnished the required proof, the question of the ship's seaworthiness was left in doubt, that doubt must be resolved in favour of the shipper, because the vessel owner had not sustained the burden cast upon him by the law to establish that he had used due diligence to furnish a seaworthy vessel.

While we, therefore, accept the decision of the learned Circuit Court of Appeals as to the facts in this case we do not wish to be regarded as sanctioning any relaxation of the rule above stated, already laid down in the prior decisions of this Court."

The Paraguay (1908).

(30) The libellants chartered the steamship *Paraguay* for two voyages from Porto Rico to New York with cargoes of molasses. On the delivery of the molasses at end of second voyage it was found thin and damaged by being diluted by sea water in being pumped out of vessel at port, for which charterers sued vessels. The Court found the damage due to a sea valve connecting with one of the pumps having been left partially open, and that this was a fault in the management of the vessel, from liability for which the owner is protected under Section 3 of the Harter Act, it being affirmatively shown that the valve was in good condition and that it was properly closed when the cargo was loaded at the commencement of the voyage.

Corsar v. *Spreckels* (1905).

(31. The ship *Musseleray* bound from Antwerp to San Francisco with a cargo of cement, encountered such rough weather in attempting to round Cape Horn that the strain opened some deck seams and the water entering damaged part of her cargo. She finally abandoned the attempt and completed her voyage by way of Cape of Good Hope. When she changed her course she was within 370 miles of Port Stanley, where she could have repaired, but she did not and the cargo suffered further damage by the opening of seams. *Held* that the change of course and the determination not to put in for repairs were matters pertaining to the "navigation and management of the vessel" within the Harter Act and not to the custody, care or proper delivery of the cargo. But it was shown she was not properly stowed at the beginning of the voyage which rendered her unseaworthy and, therefore, she was not exempted by the Harter Act.

The Tenedos (1905).

(32). The steamship *Tenedos* started on a voyage from certain Mediterranean ports to New York with one of her ports open, the glass bull's eye protecting it having been stolen. During the voyage water entered the vessel through the port damaging the cargo of cotton, for such damage cargo owners libelled the vessel. *Held* the vessel liable; if a port is negligently left open at the commencement of a voyage especially if the port, as in this case, is so located as to be submerged when the vessel is fully loaded, the vessel is unseaworthy. The ports should have been examined or inspected. The vessel is not protected under the Harter Act on the ground that the fault was one in navigation or the management of the vessel, although proper appliances for closing the ports were furnished; and this rule is especially applicable where the ports are so located as to be submerged when the vessel was fully loaded.

The Robert Donaldson (1905).

(33) The barge *Robert Donaldson*, while being unloaded by the consignee in the usual manner, sprang a leak. The barge had an uneven keel for a few hours in the course of the unloading, and the cargo still on board was damaged by water. The consignee libelled the vessel. *Held*: Such damage was not caused by fault or error in the management of the vessel within Sec. 3 of the Harter Act, but from unseaworthiness, or negligence, or fault in relation to the proper loading of the vessel within Sec. 1 for which the vessel is liable.

Effect of Sec. III. on General Average.

The Irrawaddy

(34). The case of the *Irrawaddy* was one of stranding, and the underwriters on the cargo voluntarily paid everything assessed against the cargo, except the sum of $508.29 charged against them in respect of sacrifices of the shipowner. The Supreme Court held that the statute relieved the shipowner only from a direct claim for loss arising from a negligent stranding, but did not put the shipowner in the position of being entitled to recover from the cargo for his own sacrifices. The question of the cargo's right to obtain contribution for its sacrifices was not before the Court, and nothing was said on that subject.

(35), Although the owners of a vessel cannot maintain an affirmative action against the owners of cargo for contribution in general average for the ship's sacrifices consequent upon a fire caused by the negligence of one of her crew, owing to the decision of the *Irrawaddy*, and though reciprocity is an essential element in general average, nevertheless the owners may be subject to an action by the owners of cargo for contribution in G/A; but where the owners had been adjudged exempt from liability for a damage to the cargo resulting from fire due to the negligence of one of the ship's crew, upon the grounds that such fault was a fault in management under Section 3 of the Act (the owner having exercised due diligence to make the ship seaworthy, etc.) and a claim was pressed for contribution in G/A to the cargo's losses, it was *Held* that where shipowners are invited by the cargo into an adjustment by an action brought by the sole owner of the cargo, the losses of the ship, due to her sacrifices, must be taken into consideration and allowed for in the adjustment, as the effect of excluding them would be to make the same act for which the ship was acquitted of responsibility by the Act, a basis of the indirect recovery of a part of the damage which was in issue in the direct action. *The Strathdon.*

(9.)—THE CANADIAN WATER-CARRIAGE OF GOODS ACT.

AN Act respecting the water-carriage of goods came into force 1st September, 1910.

1. This Act may be cited as *The Water-Carriage of Goods Act.*

2. In this Act, unless the context otherwise requires:—

(*a*) "goods" includes goods, wares, merchandise, and articles of any kind whatsoever, but does not include live animals;

(*b*) "ship" includes every description of vessel used in navigation not propelled by oars;

(*c*) "port" means a place where ships may discharge or load cargo.

3. This Act applies to ships carrying goods from any port in Canada to any other port in Canada, or from any port in Canada to any port outside of Canada, and to goods carried by such ships, or received to be carried by such ships.

Certain clauses prohibited in bill of lading.

4. Where any bill of lading or similar document of title to goods contains any clause, covenant or agreement whereby—

(*a*) the owner, charterer, master, or agent of any ship, or the ship itself, is relieved from liability for loss or damage to goods, arising from negligence, fault, or failure in the proper loading, stowage, custody, care or delivery of goods received by them or any of them to be carried in or by the ship; or

(*b*) any obligations of the owner or charterer of any ship to exercise due diligence to properly man, equip, and supply the ship, and make and keep the ship seaworthy, and make and keep the ship's hold, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation, are in any wise lessened, weakened or avoided; or

(*c*) the obligations of the master, officers, agents, or servants of any ship to carefully handle and stow goods, and to care for, preserve, and properly deliver them, are in any wise lessened, weakened, or avoided;

such clause, covenant or agreement shall be illegal, null and void, and of no effect unless such clause, covenant or agreement is in accordance with the other provisions of this Act.

5. Every bill of lading or similar document of title to goods relating to the carriage of goods from any place in Canada to any place outside of Canada shall contain a clause to the effect that the shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in, this Act: and any stipulation or agreement purporting to oust or lessen the jurisdiction of any court having jurisdiction at the port of loading in Canada in respect of the bill of lading or document, shall be illegal, null and void, and of no effect.

Responsibility for navigation and management.

6. If the owner of any ship transporting merchandise or property from any port in Canada exercises due diligence to make the ship in all respects seaworthy and properly manned, equipped and supplied, neither the ship nor the owner, agent or charterer shall become or be held responsible for loss or damage resulting from faults or errors in navigation or in the management of the ship, or from latent defect.

Loss for which the shipowner is not liable.

7. The ship, the owner, charterer, agent or master shall not be held liable for loss arising from fire, dangers of the sea or other navigable waters, acts of God or public enemies, or inherent defect, quality or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service or other reasonable deviation, or from strikes, or for loss arising without their actual fault or privity, or without the fault or neglect of their agents, servants or employees.

Limit of liability as to value of goods.

8. The ship, the owner, charterer, master or agent shall not be liable for loss or damage to or in connection with goods for a greater amount than one hundred dollars per package, unless a higher value is stated in the bill of lading or other shipping document, nor for any loss or damage whatever if the nature or value of such goods has been falsely stated by the shipper, unless such false statement has been made by inadvertence or error. The declaration by the shipper as to the nature and value of the goods shall not be considered as binding or conclusive on the ship, her owner, charterer, master or agent.

Bill of lading to be issued to shipper.

9. Every owner, charterer, master or agent of any ship carrying goods, shall on demand issue to the shipper of such goods a bill of lading showing, among other things, the marks necessary for identification as furnished in writing by the shipper, the number of packages or pieces, or the quantity or the weight, as the case may be, and the apparent order and condition of the goods as delivered to or received by such owner, charterer, master or agent; and such bill of lading shall be *prima facie* evidence of the receipt of the goods as therein described.

Delivery in case of wood goods.

10. In case of wood goods notwithstanding anything in the charter party, bill of lading or other shipping document the owner, charterer, master or agent of the ship or the ship itself shall only be bound to deliver to the consignee the pieces received from the shipper and shall not be held responsible for deficiency in measurement; and any words inserted in any charter party, bill of lading or other shipping document for the purpose of making the owner, charterer, master or agent of the ship or the ship itself, liable for deficiency in measurement in such case shall be illegal null and void and of no effect.

Notice of arrival of ship.

11. When a ship arrives at a port where goods carried by the ship are to be delivered, the owner, charterer, master or agent of the ship shall forthwith give such notice as is customary at the port, to the consignees of goods to be delivered there, that the ship has arrived.

Penalties.

12. Everyone who, being the owner, charterer, master or agent of a ship—

(*a*) inserts in any bill of lading or similar document of title to goods any clause, covenant or agreement declared by this

Act to be illegal; or makes, signs, or executes any bill of lading or similar document of title to goods containing any clause, covenant or agreement declared by this Act to be illegal;

without incorporating *verbatim*, in conspicuous type, in the same bill of lading or similar document of title to goods, section 4 of this Act; or

(*b*) refuses to issue to a shipper of goods a bill of lading as provided by this Act; or

(*c*) refuses or neglects to give the notice of arrival of the ship required by this Act;

is liable to a fine not exceeding one thousand dollars, with cost of prosecution; and the ship may be libelled therefor in any Admiralty District in Canada within which the ship is found.

Shipment of explosives.

13. Every one who knowingly ships goods of an inflammable or explosive nature, or of a dangerous nature, without before shipping the goods making full disclosure in writing of their nature to, and obtaining the permission in writing of, the agent, master or person in charge of the ship, is liable to a fine of one thousand dollars.

14. Goods of an inflammable or explosive nature, or of a dangerous nature, shipped without such permission from the agent, master or person in charge of the ship, may, at any time before delivery, be destroyed or rendered innocuous, by the master or person in charge of the ship, without compensation to the owner, shipper or consignee of the goods; and the person so shipping the goods shall be liable for all damages directly or indirectly arising out of such shipment.

(10.)—SEA CARRIAGE OF GOODS (COMMONWEALTH OF AUSTRALIA) ACT, 1904.

An Act relating to the Sea-Carriage of Goods.

[Assented to 15th December, 1904].

Be it enacted by the King's most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia as follows :—

1. This Act may be cited as the *Sea-Carriage of Goods Act*, 1905. **Short title.**

2. This Act shall commence on the first day of January, One thousand nine hundred and five. **Commencement of Act.**

3. In this Act, "goods" include every description of wares, merchandise, and things, except live animals. **Definition.**

4. (1) This Act shall apply only in relation to ships carrying goods from any place in Australia to any place outside Australia, or from one State to another State, and in relation to goods so carried, or received to be so carried, in those ships. **Application of Act.**

(2) This Act shall not apply to any bill of lading or document made before the thirtieth day of June, One thousand nine hundred and five, in pursuance of a contract or agreement entered into before the seventeenth day of November, One thousand nine hundred and four.

5. Where any bill of lading or document contains any clause, covenant, or agreement whereby— **Certain clauses prohibited in bills of lading.**

(*a*) the owner, charterer, master or agent of any ship, or the ship itself, is relieved from liability for loss or damage to goods arising from the harmful or improper condition of the ship's hold, or any other part of the ship in which goods are carried, or arising from negligence, default or failure in the proper loading, stowage, custody, care, or delivery of goods received by them or any of them to be carried in or by the ship; or **Ct.U.S. 1893 c. 105, ss. 1 and 2.**

(*b*) any obligations of the owner or charterer of any ship to exercise due diligence, and to properly man, equip, and supply the ship, to make and keep the ship seaworthy, and to make and keep the ship's hold, refrigerating, and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation, are in any wise lessened, weakened or avoided; or **N.Z. 1903, No. 96 s. 300.**

(*c*) the obligations of the master, officers, agents, or servants of any ship to carefully handle and stow goods, and to care for, preserve and properly deliver them, are in any wise lessened, weakened or avoided,

that the clause, covenant, or agreement shall be illegal, null and void, and of no effect.

Construction and jurisdiction

6. All parties to any bill of lading or document relating to the the carriage of goods from any place in Australia to any place outside Australia shall be deemed to have intended to contract according to the the laws in force at the place of shipment, and any stipulation or agreement to the contrary, or purporting to oust or lessen the jurisdiction of the Courts of the Commonwealth or of a State in respect of the bill of lading or document, shall be illegal, null and void, and of no effect.

Penalties.

7. The owner, charterer, master, or agent of a ship shall not—

(*a*) insert in any bill of lading or document any clause, covenant, or agreement declared by this Act to be illegal, or

(*b*) make, sign, or execute any bill of lading or document containing any clause, covenant, or agreement declared by this Act to be illegal.

Penalty : One hundred pounds.

Implied clauses in bills of lading.

8. (1) In every bill of lading with respect to goods a warranty shall be implied that the ship shall be, at the beginning of the voyage, seaworthy in all respects and properly manned, equipped and supplied.

(2) In every bill of lading with respect to goods, unless the contrary intention appears, a clause shall be implied whereby if the ship is at the beginning of the voyage seaworthy in all respects and properly manned, equipped and supplied, neither the ship nor her owner, master, agent, or charterer shall be responsible for damage to or loss of the goods resulting from—

(*a*) faults or errors in navigation, or

(*b*) perils of the sea or navigable waters, or

(*c*) acts of God or the King's enemies, or

(*d*) the inherent defect quality or vice of the goods, or

(*e*) the insufficiency of package of the goods, or

(*f*) the seizure of the goods under legal process, or

(*g*) any act of omission of the shipper or owner of the goods, his agent or representative, or

(*h*) saving or attempting to save life or property at sea, or

(*i*) any deviation in saving or attempting to save life or property at sea.

(11.)—WORKMEN'S COMPENSATION ACT, 1906.

An Act to consolidate and amend the Law with respect to compensation to workmen for injuries suffered in the course of their employment:—

21*st December*, 1906.

Summary.

Sec. 1.—(1). If, in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation.

(2) Provided that:—

(a) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed.

(b) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act.

(c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement be disallowed.

(3) If any question arises under this Act as to the liability to pay compensation or as to the amount or duration of compensation, the question, if not settled by agreement, shall be settled by arbitration as provided for by the Act.

Sec. 2.—(1) Proceedings for the recovery of compensation under this Act shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof, and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident, or, in case of death, within six months from the time of death. The want of or any defect or inaccuracy in such notice shall not be a bar to proceedings, unless the employer has been prejudiced in his defence by the want, defect or inaccuracy; nor shall the failure to make a claim within the period named be a bar if due to mistake, absence from the United Kingdom or other reasonable cause.

(2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer.

(3) The Notice may be served by delivering same at or sending it by post in a registered letter addressed to the residence or place of business of, the person on whom it is to be served.

Sec. 3.—Provides for contracting out of the Act, if the Registrar of Friendly Societies certifies that any scheme of compensation, benefit, or insurance gives scales of compensation not less favourable to the workmen and their dependants than the corresponding scales contained in this Act.

Sec. 4.—(1) Where any principal in the course of and for the purposes of his trade or business contracts with any contractor for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

(2) The principal shall be entitled to be indemnified by any person who would have been liable independently of this section.

(3) A workman shall not be prevented from recovering compensation from the contractor instead of the principal.

(4) This section shall apply only where the accident occurred on or in or about premises on which the principal has undertaken to execute or which are under his control or management.

Sec. 5.—Provides for a workman's remedy against insurers of the employer where the employer himself is bankrupt or insolvent.

Sec. 6.—Regulates the rights of the workmen and of any person liable to any compensation under this Act where the injury was caused under circumstances creating a legal liability in a stranger.

Sec. 7.—(1) This Act shall apply to the masters, seamen and apprentices to the sea service and in the sea-fishing service provided that such persons are workmen within the meaning of this Act and are members of the crew of any ship registered in the United Kingdom or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner or manager resides or has his principal place of business in the United Kingdom subject to the following modifications:—

(a) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master as if he were the employer, but where the accident happened and the incapacity commenced on board the ship notice of accident is not necessary.

(b) In case of death the claim shall be made within 6 months after news of the death has been received by the claimant.

(c) Where an injured master, seaman or apprentice is discharged or left behind in a British possession or in a foreign country depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession and by any British consular officer in the foreign country. Such depositions shall be forwarded to the Board of Trade and shall in any proceedings for enforcing the claim be admissable in evidence as provided by sections 691 and 695 of the Merchant Shipping Act, 1894, and those sections shall apply accordingly.

(d) In the case of death of a master seaman or apprentice leaving no dependants no compensation shall be payable if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay the expenses of burial.

(e) The weekly payment shall not be payable while the owner is liable to defray the expenses of the maintenance of the injured under the Merchant Shipping Act, 1894, or otherwise.

(f) Any sum payable by the owner under this Act shall be paid in full notwithstanding anything in Sec. 503 of the Merchant Shipping Act, 1894, but the limitation on the owners liability imposed by that section shall apply to the amount recoverable by way of indemnity under Sec. 6 of this Act. as if the indemnity were damages for loss of life or personal injury.

(g) Sub-Sec. (2) and (3) of Sec. 174 of the Merchant Shipping Act, 1894, shall apply to proceedings for the recovery of compensation by dependants of masters, seamen and apprentices lost with their ship, such proceedings shall be maintainable if the claim is made within 18 months of the date at which the ship is deemed to have been lost with all hands.

(2) This Act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

(3) This Sec. shall extend to pilots to whom Part X. of the Merchant Shipping Act, 1894, applies.

Sec. 11.—(1) Gives power to a judge of any court of record in England or Ireland to issue an order for the detention of a ship if it is alleged that the owners are probably liable in such to pay compensation under this Act and that none of the owners reside in the United Kingdom.

(3) Sec. 692 of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act, and if the owner of a ship is a corporation it shall be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

Sec. 13.—In this Act, unless the contract otherwise requires, "workman" does not include any person employed otherwise than by

way of manual labour, whose remuneration exceeds two hundred and fifty pounds a year, or a person whose employment is of a casual nature, and who is employed otherwise than for the purpose of the employer's trade or business, or a member of a police force, or an out worker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise.

"Ship," "vessel," "seaman" and "port" have the same meaning as in the Merchant Shipping Act, 1894;

"Manager," in relation to a ship, means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner;

By the first Schedule to the Act the scale and conditions of compensation are provided for.

(1) The amount of compensation under this Act shall be—

(a) Where death results from the injury:—(I.) If the workman leaves any dependants wholly dependent upon his earnings a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of £150, whichever of those sums is the larger, but not exceeding in any case £300, provided that the amount of any weekly payments made under this Act and any lump sum paid in redemption thereof shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment. (II.) If the workman leaves no such dependant but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions as may be agreed upon, or in default of agreement may be determined on arbitration. (III.) If he leaves no dependants the reasonable expenses of his medical attendance and burial, not exceeding £10.

(b) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding 50 per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed £1. If the employment lasts less than two weeks no compensation shall be payable in respect of the first week.

[The conditions as to compensation and assessment are set out with much detail in this schedule.]

The Act has no application outside the territorial limits of the United Kingdom except in the case of seamen and sea apprentices, provided for by Section 7 (*Tomalin* v. *Pearson & Son, Ltd.* (1909) 2 K. B. 61), but probably it is not necessary for the dependants to be resident in the United Kingdom.

"ACCIDENT" in this Act must be construed in the popular and ordinary sense of the word as denoting an unlooked-for mishap or an untoward event which is not expected or designed (*Fenton* v. *Thorley & Co., Ltd.* (1903), A. C 443).

In *Ismay, Imrie & Co.* v. *Williamson* (1908, A. C. 437), it was held that a workman who had died from the effects of a heat stroke which happened to him whilst raking out ashes under the boiler in the stokehole of a steamship had died from accident, and a similar decision was given in *Morgan* v. *Owners of ss. Zenaida* (25 T. L. R. 446), where death was the result of a sunstroke. A disease gradually contracted does not, it seems, come under the words "personal injury by accident" (*Broderick* v. *London County Council* (1908), 2 K. B. 807).

"ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT."—The leading principles in construing these words are:—

(1.) The accident must have arisen from a risk incidental to the work which it was the duty of the injured workman to perform, giving a wide and liberal interpretation to the word "duty."

(2.) The accident must have occurred at a time when the relation of master and servant could reasonably be held to be subsisting between the injured workman and the employer.

The onus of proving that the accident arose out of and in the course of the employment always rests on the applicant. If an inference favourable to the applicant can only be arrived at by a guess, the claim fails. The same result follows where two or more inferences are equally consistent with the facts, but where the probability of one inference, which the facts are capable of supporting is *clearly* stronger than another, it is open to the arbitrator to adopt this inference, which thus becomes a finding of fact and cannot be interfered with by the Court above.

In *McDonald* v. *Owners of ss. Banana* (1908, 2 K. B. 926), a donkeyman, whilst returning on board his employer's ship from the shore, fell off the gangway and was killed, and it was held that the claim of the widow, who adduced no evidence as to the purpose for which the deceased went on shore, failed.

In *Bender* v. *Owners of ss. Zent* (1909, 2 K. B. 41), while a steamship was on the high seas the cook was lost overboard; the weather was fine at the time, the ship was steady, and there was a four-foot rail and bulwark all round. The deceased was last seen at 5.35 a.m. going aft. It was held that there was no evidence to enable the Court to draw the necessary inference that the accident arose "out of" the employment.

In *Moore* v. *Manchester Liners, Ltd.* (1910, A. C. 498), a fireman went ashore with leave to procure necessaries not provided by the owners of the ship on which he was employed. In returning to the ship he fell off a ladder which was the only means of access to the ship and was drowned. It was held that the accident arose out of and in the course of his employment.

In *Marshall* v. *Owners of ss. Wild Rose* (1910, A. C. 486), it was decided that the unexplained drowning of a seaman engaged on board ship does not of itself raise any presumption that his death was the result of an accident arising out as well as in the course of his employment.

In *Hewitt* v. *Owners of Ship Duchess* (1910, 1 K. B. 772), where there was no evidence as to whether the master of a ship had gone on shore on his own business or on that of the ship, but it was proved that he had a perfect right to go on shore and might have gone there in discharge of his duty to the ship, it was held that the claimant had not discharged the onus of proving that the accident arose out of and in the course of his employment.

In *Gilbert* v. *Owners of Steam Trawler Wizam* (1910, 2 K. B. 555), it was held that no compensation was due where the engineer of a ship, having finished his morning's work, went home to dinner, and on his return fell into the dry dock where his body was found.

In *Low or Jackson* v. *General Steam Fishing Co.* (1909, A. C. 532), where a man, who was watching trawlers as they lay in harbour, went to a hotel for refreshment, and on his return to the quay, while descending a fixed ladder to go on board one of the trawlers, fell into the water and was drowned, it was held by a majority of the House of Lords that compensation was due because, when the accident occurred, the man had returned to the quay, which was within the sphere of his duty.

In *Mitchell* v. *The Glamorgan Coal Co.* (1907, 23 T. L. R. 588), the fact that there was more probability that the accident, from which a man died, happened when he was working at the pit than in the ordinary course of life, was held to justify the inference that the accident arose in the course of the employment.

"SEAMAN." This seems to be a very wide term, for the section of the M.S. Act gives a description rather than a definition, for the words used are "shall include," not "mean," the persons referred to.

"EARNINGS." In estimating the earnings of a seaman the test is what was the actual value to the man of the reasonable board, &c., provided for him by his employers. "Not necessarily the cost to the employers, but the value to the workman."

Payments made to or pecuniary benefit conferred upon a seaman after his accident by or on behalf of his employer must be taken into account under Schedule 1 (3) when compensation is subsequently assessed.

Cuts and abrasions.

The attention of Masters is called to the need for prompt and careful treatment of all cuts, abrasions or wounds happening on board. Cases are repeatedly coming to light in which wounds, in themselves slight, lead to bad cases of blood poisoning owing to want of proper attention at the time.

An eminent medical authority suggests that all vessels should be supplied with the following materials for dressing wounds, viz. :—

1. One pound (in one yard lots) of lint impregnated with 25 per cent. of Boric Acid.
2. A 5 per cent. solution of Carbolic Acid.
3. Some crystals of Permanganate of Potash.
4. A supply of Jaconet (mackintosh sheeting).

and he recommends the following method of dressing wounds :—

1. The limb or part affected should be thoroughly cleansed with soap and water.
2. The wound should then be thoroughly cleansed with the Carbolic Solution above mentioned.
3. A double layer of the Boric Lint (of a sufficient size to a little more than cover twice the extent of the wound) should then be dipped in very hot water, wrung out nearly dry and applied to the wound.

   It is very important that the Boric Lint when put on should not be dry but should be wrung out in very hot water till nearly dry.
4. The lint should then be covered every way by a layer of the mackintosh sheeting, and should be kept in position by some kind of bandage or tape. The mackintosh should be considerably larger than the Boric Lint so as to overlap it on all sides, thus keeping the heat and moisture in.
5. The wound should be re-dressed with an entirely fresh piece of lint every two hours during the day and as often as practicable during the night.

   The change of dressing is very important soon after the accident, but the frequent changes need not continue more than perhaps for one or two days and nights.

On fishing vessels serious wounds sometimes result from the prick of a poisonous fish. Should a prick be received from a "weaver" or

poisonous fish the first thing to be done, in addition to the above, should be to suck the wound well (provided the lips are not cracked) and then to press into the wound a few grains of Permanganate of Potash moistened with water, then adopt process of dressing as above.

In the case of BURNS the first thing to do is to exclude the air, and if the burning is on a limb the easiest plan is to put the limb into a pail of water, warm if possible, with some common washing soda in it, while the other things are being prepared. If the burn is covered with clothing see that everything is ready before removing the clothing. Great care is required in the removal of clothing, boots, etc. These should be cut and not dragged off. Soak any part of the clothing which adheres to the burnt part with oil, the one that is handiest, either Colza, Olive, Linseed or Sweet Oil with a view to the clothing being taken away without any application of force. Do not attempt to remove the whole of the clothing at once, but as part of the skin is exposed smear the place with oil and cover at once with linen soaked in oil or vaseline. Lard or butter may be used if handier. When the surface of the wound has been exposed and covered with oiled linen, cover the whole with a thick layer of wool or flannel and apply a bandage. If there is any Carron Oil on board this, of course, would be used in preference to the plain oil If the eyes are burnt put a few drops of Castor Oil in between the lids.

(12.)—MARINE INSURANCE (GAMBLING POLICIES) ACT, 1909.

Prohibition of gambling on loss by maritime perils.

(1) If (*a*) any person effects a contract of marine insurance without having any bona fide interest, direct or indirect, either in the safe arrival of the ship in relation to which the contract is made, or in the safety or preservation of the subject-matter insured, or a bona fide expectation of acquiring such an interest; or

(*b*) any person in the employment of the owner* of a ship not being a part owner of the ship, effects a contract of marine insurance in relation to the ship, and the contract is made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term,

the contract shall be deemed to be a contract by way of gambling on loss by maritime perils, and the person effecting it shall be guilty of an offence, and shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding six months or to a fine not exceeding one hundred pounds, and in either case to forfeit to the Crown any money he may receive under the contract.

(2) Any broker or other person through whom, and any insurer with whom, any such contract is effected shall be guilty of an offence and liable on summary conviction to the like penalties if he acted knowing that the contract was by way of gambling on loss by maritime perils within the meaning of this Act.

(3) Proceedings under this Act shall not be instituted without the consent in England of the Attorney-General, in Scotland of the Lord Advocate, and in Ireland of the Attorney-General for Ireland.

(4) Proceedings shall not be instituted under this Act against a person (other than a person in the employment of the owner of the ship in relation to which the contract was made) alleged to have effected a contract by way of gambling on loss by maritime perils until an opportunity has been afforded him of showing that the contract was not such a contract as aforesaid, and any information given by that person for that purpose shall not be admissible in evidence against him in any prosecution under this Act.

(5) If proceedings under this Act are taken against any person (other than a person in the employment of the owner of the ship in relation to which the contract was made) for effecting such a contract, and the contract was made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term, the contract shall be deemed to be a contract by way of gambling on loss by maritime perils unless the contrary is proved.

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* The term "owner" includes a charterer.

(13.)—SHIPOWNERS' NEGLIGENCE REMEDIES ACT (1905).

Enlargement of remedy by action for injuries caused by negligence of a shipowner.

(1) If it is alleged that the owners of any ship are liable to pay damages in respect of personal injuries, including fatal injuries caused by the ship, or sustained on, in, or about the ship in any port or harbour in the U.K. in consequence of the wrongful act, neglect, or default of the owners of the ship, or the master or officers or crew thereof, or any other person in the employment of the owners of the ship, or of any defect in the ship or its apparel or equipment, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with rules of court that the owners are probably liable to pay damages in respect of such injuries, and that none of the owners reside in the U.K., issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have made satisfaction in respect of the injuries, or have given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of the injuries, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding in relation to such injuries as aforesaid, the person giving security shall be made defendant, and shall be stated to be the owner of the ship which has caused the injuries, or on, in, or about which the injuries were sustained, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

(3.) Section six hundred and ninety-two of the M. S. Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act.

(14.)—MERCHANT SHIPPING ACT, 1906.

PART I.—SAFETY.

Application of British load-line to foreign ships.

1.—The load line regulations of the 1894 Act now apply to all foreign ships while they are within any port in the U.K., as they apply to British ships, except that in the case of ships of any foreign country in which the regulations in force relating to overloading and improper loading are equally effective with the provisions of the 1894 Act, His Majesty in Council may make special provisions.

Detention of foreign ships when unsafe.

2.—Section 462 of the 1894 Act (which relates to the detention of foreign ships)—

(1) Shall apply in the case of a ship which is unsafe by reason of the defective condition of her hull, equipments, or machinery, and accordingly that section shall be construed as if the words "by reason of the defective condition of her hull, equipments, or machinery, or" were inserted before the words "by reason of overloading or improper loading"; and

(2) Shall apply with respect to any foreign ships being at any port in the U.K., whether those ships take on board any cargo at that port or not.

Loading of grain cargoes on foreign ships.

3.—(1) Sections 452 and 455 of the 1894 Act shall apply to a foreign ship which loads a grain cargo in the U.K. so long as the ship is within a port in the U.K.

(2) If a foreign ship laden with grain cargo arrives at any port in the U.K., having the grain cargo so loaded that the master of the ship, if the ship were a British ship, would be liable to a penalty, the master of that foreign ship shall be liable to a fine not exceeding three hundred pounds.

(3) Section 455 of the 1894 Act shall apply to a foreign ship laden with grain which discharges all or any part of her cargo at any port in the U.K. so long as the ship is within a port in the U.K.

Application of life-saving appliances to foreign ships.

4.—Sections 427 to 431 of the 1894 Act relating to life-saving appliances shall apply to all foreign ships while they are within any port of the U.K. as they apply to British ships:—

Provided that His Majesty may by Order in Council direct that those provisions shall not apply to any ship of a foreign country in which the provisions in force relating to life-saving appliances appear to His Majesty to be as effective as the provisions of the 1894 Act, on proof that those provisions are complied with in the case of that ship.

6.—Nothing in this Act shall affect any foreign ship not bound to a port of the U.K. which comes into any port of the U.K. for any purpose other than the purpose of embarking or landing passengers, or taking in or discharging cargo or taking in bunker coal.

Coasting steamships not exempt from load-line provisions.

7.—The exemption of ships under eighty tons register employed solely in the coasting trade in so far as the marking of deck lines and load lines is concerned shall cease so far as respects steamships:—

Provided that the Board of Trade may except from the provisions of this section any class of steamships, so long as they do not carry cargo.

9.—(1) The master of every British ship shall enter or cause to be entered in the official log-book, a statement, or if there is no official log-book, cause a record to be kept, of every occasion on which boat drill is practised on board the ship, and on which the life-saving appliances on board the ship have been examined for the purpose of seeing that those appliances are fit and ready for use. **Entry in log-book of boat drill, &c.**

(2) The master shall, if and when required by any officer of the Board of Trade, produce for inspection any record kept by him for the purposes of this section.

(3) If the master of a ship fails to comply with any requirement of this section, he shall be liable on summary conviction for each offence to a fine not exceeding ten pounds.

10.—(1) If a ship, British or foreign, arrives between the last day of October and the sixteenth day of April in any year at any port in the U.K. from any port out of the U.K., carrying any heavy or light wood goods as deck cargo (except under the conditions allowed by this section), the master of the ship, and also the owner, if he is privy to the offence, shall be liable to a fine not exceeding five pounds for every hundred and fifty cubic feet of space in which wood goods are carried in contravention of this section. **Loading of timber.**

(2) The conditions under which heavy wood goods may be carried as deck cargo are as follows :—

(a) that they must only be carried in covered spaces ; and

(b) that they must be carried only in such class of ships as may be approved by the Board of Trade for the purpose ; and

(c) that they must be loaded in accordance with regulations made by the Board of Trade with respect to the loading thereof.

(3) The conditions under which light wood goods may be carried as deck cargo are as follows :—

(a) Each unit of the goods must be of a cubic capacity not greater than fifteen cubic feet ; and

(b) The height above the deck to which the goods are carried must not exceed—

(i) in the case of an uncovered space on a deck forming the top of a break, poop, or other permanent closed-in space on the upper deck, three feet above the top of that closed-in space ; and

(ii) in the case of an uncovered space, not being a space forming the top of any permanent closed-in space on the upper deck or a space forming the top of a covered space, the height of the main rail, bulwark, or plating, or one-fourth of the inside breadth of the ship, or seven feet, whichever height is the least ; and

(iii) in the case of a covered space the full height of that space.

(c) Regulations may be made by the Board of Trade for the protection of seamen from any risk arising from the carriage of

the goods in any uncovered space to the height allowed under this section, and those regulations must be complied with on the ship.

(4) A master or owner shall not be liable to any fine under this section—

(a) in respect of any wood goods which the master has considered it necessary to place or keep on deck during the voyage on account of the springing of any leak, or of any other damage to the ship received or apprehended; or

(b) if he proves that the ship sailed from the port at which the wood goods were loaded as deck cargo at such time before the last day of October as allowed a sufficient interval according to the ordinary duration of the voyage for the ship to arrive before that day at the said port in the U.K., but was prevented from so arriving by stress of weather or circumstances beyond his control; or

(c) if he proves that the ship sailed from the port at which the wood goods were loaded as deck cargo at such time before the sixteenth day of April as allowed a reasonable interval according to the ordinary duration of the voyage for the ship to arrive after that day at the said port in the U.K., and by reason of an exceptionally favourable voyage arrived before that day.

(5) For the purposes of this section—

(a) the expression "heavy wood goods" means—

(i) any square, round, waney, or other timber, or any pitch pine, mahogany, oak, teak, or other heavy wood goods whatever; or

(ii) any more than five spare spars or store spars, whether or not made, dressed, and finally prepared for use; and

(b) the expression "light wood goods" means any deals, battens, or other light wood goods of any description; and

(c) the expression "deck cargo" means any cargo carried either in any uncovered space upon deck or in any covered space not included in the cubical contents forming the ship's registered tonnage; and

(d) the space in which wood goods are carried shall be deemed to be the space limited by the superficial area occupied by the goods, and by straight lines enclosing a rectangular space sufficient to include the goods.

(6) Nothing in this section shall affect any ship not bound to a port in the U.K. which comes into any port of the U.K. under stress of weather, or for repairs, or for any purpose other than the delivery of her cargo.

Seamen with insufficient knowledge of English.

12.—The superintendent or other officer, before whom a seaman is engaged to be entered on board any British ship at any port in the British Islands or on the continent of Europe between the River Elbe and Brest inclusive, shall not allow a seaman to sign the agreement if in his opinion the seaman does not possess a sufficient knowledge of the English language to understand the necessary orders that may be given to him in the course

of the performance of his duties; but nothing in this section shall apply to any British subject or inhabitant of a British protectorate or to any lascar.

Part III.—Seamen's Food.

Statutory scale of provisions for crew.

25.—(1) The master of every ship for which an agreement with the crew is required under the M.S. Acts shall furnish provisions to every member of the crew (who does not furnish his own provisions) in accordance with the scale set out in the First Schedule to this Act.

(2) The power of the court to modify or refuse compensation under section 199 of the 1894 Act shall be extended to cases where a member of the crew claiming compensation, although he has not been supplied with the provisions actually required by the scale, has been supplied with provisions containing on the whole the same or a greater amount of wholesome nutriment in their place.

(3) If the master of a ship fails to furnish provisions in accordance with this section, and the court before which the case is tried consider that the failure was due to the neglect or default of the master, the master shall be liable on summary conviction, in addition to paying compensation, to a fine not exceeding one hundred pounds.

(4) His Majesty may by Order in Council vary or add to the First Schedule to this Act.

(5) This section shall not apply in the case of lascars or natives of India or others not accustomed to a European dietary, with whom an agreement is entered into providing an adequate scale of provisions suited to their needs and uses.

Inspection of provisions and water.

26.—(1) An inspecting officer may inspect (either on board the ship or before shipment) any provisions or water intended for the use of the crew of any British ship which is going from any port in the U.K. and for which an agreement with the crew is required under the M.S. Acts (other than provisions provided by the crew themselves), and if he finds that the provisions or water are in any respect deficient in quality, the ship shall be detained until the defects are remedied to his satisfaction :—

Provided that any inspection of provisions or water under this section shall be made before shipment whenever practicable, and, if the master, owner, or agent of a ship gives notice to the inspecting officer that any provisions or water for the ship are ready for inspection, the inspecting officer shall not have power to inspect any such provisions or water under this section, if they are at a convenient place for inspection, except within forty-eight hours after the notice is given, without prejudice to the power of the inspecting officer to inspect any provisions or water not specified in the notice or without unnecessarily delaying the ship to proceed on board the ship in order to satisfy himself that there has been no evasion of the requirements of this section by the substitution of other provisions or water for those which have been inspected on shore or specified

in a notice as being the provisions or water for the ship, or otherwise.

(2) Where any provisions or water are found deficient in quality under this section, the master of the ship shall be liable on summary conviction to a fine not exceeding a hundred pounds, unless the court before which the case is tried think that the finding of the inspecting officer was not justified; but if the master of the ship shows to the satisfaction of the court that the responsibility for the defects in the provisions or water rests either with the owner of the ship, or any agent of the owner of the ship, or with the person who has supplied the provisions or water, that agent, owner, or person shall be liable to conviction for the offence instead of the master, and the master shall be exempt.

(3) The master of the ship and any other person having charge of any provisions or water liable to inspection under this section shall give the inspecting officer every reasonable facility for the purpose of his inspection under this section, and, if he refuses or fails to do so shall be liable for each offence on summary conviction to a fine not exceeding ten pounds.

Certificated cooks for foreign-going ships.

27.—(1) After the 30th of June, 1908, every British foreign-going ship of a thousand tons and upwards gross tonnage, going to sea from any place in the British Islands or on the continent of Europe between the River Elbe and Brest inclusive, shall be provided with and carry a duly certificated cook who is able to prove one month's service at sea in some capacity.

(2) A cook shall not be deemed to be duly certificated within the meaning of this section unless he is the holder of a certificate of competency in cooking granted by the Board of Trade or by some school of cookery or other institution approved for the purpose by that Board, or is the holder of certificates of discharge showing at least two years' service as cook previously to the 30th of June, 1908.

(3) The cook shall be rated in the ship's articles as ship's cook, or in the case of ships of not more than two thousand tons gross tonnage, or ships in which the crew, or the majority of the crew, provide their own provisions, either as ship's cook or as cook and steward.

Part IV.—Provisions as to Relief and Repatriation of Distressed Seamen, and Seamen Left Behind Abroad.

Wages and effects of seaman left behind.

28.—(1) If a seaman belonging to any British ship is left behind out of the British Islands, the master of the ship shall subject to the provisions of this section—

(a) as soon as may be, enter in the official log-book a statement of the effects left on board by the seaman and of the amount due to the seaman on account of wages at the time when he was left behind; and

(b) on the termination of the voyage during which the seaman was left behind, furnish to the proper officer within forty-eight hours after the arrival of the ship at the port at which the

voyage terminates, accounts in a form approved by the Board of Trade, one (in this section referred to as the delivery account) of the effects and wages, and the other (in this section referred to as the reimbursement account) of any expenses caused to the master or owner of the ship by the absence of the seaman in cases where the absence is due to desertion, neglect to join his ship, or any other conduct constituting an offence under section 221 of the 1894 Act.

(2) The master of the ship shall deliver to the proper officer the effects of the seaman as shown in the delivery account, and subject to any deductions allowed under this section, the amount due on account of wages as shown in that account, and the officer shall give to the master a receipt, in a form approved by the Board of Trade, for any effects or amount so delivered.

(3) The master of the ship shall be entitled to be reimbursed out of the wages or effects any sums shown in the reimbursement account which appear to the proper officer or, in the case of an appeal under this section, to a court of summary jurisdiction to be properly chargeable, and for that purpose the officer, or, if necessary, in the case of an appeal, the Board of Trade, shall allow those sums to be deducted from the amount due on account of wages shown in the delivery account, and, so far as that amount is not sufficient, to be repaid to the master out of the effects.

The proper officer, before allowing any sums to be deducted or repaid under this provision, may require such evidence as he thinks fit as to the sums being properly chargeable to be given by the master of the ship, either by statutory declaration or otherwise.

Where the master of a ship whose voyage terminates in the United Kingdom is aggrieved by the decision of the proper officer as to the sums to be allowed as properly chargeable on his reimbursement account, and the amount in dispute exceeds ten pounds, he may appeal from the decision of the proper officer to a court of summary jurisdiction.

(4) Where during the voyage of a ship two or more seamen have been left behind, the delivery and reimbursement accounts furnished as respects each seaman may at the option of the master of the ship be dealt with, as between him and the proper officer, collectively instead of individually, and in that case the master of the ship shall be entitled to be reimbursed out of the total amount of wages and effects of the seaman left behind the total of the amounts allowed under this section as properly chargeable on the reimbursement accounts, and shall be required to deliver to the proper officer on account of wages only the sum by which the total of the amounts shown on the delivery accounts to be due on account of wages exceeds the total of the amounts allowed as properly chargeable on the reimbursement accounts.

(5) The proper officer shall (subject to any repayment made under this section) remit the effects, and any amount received by him on account of wages under this section, at such time and in

such manner as the Board of Trade require, and shall render such accounts in respect thereof as the Board direct.

(6) In this section the expression "effects" includes the proceeds of any sale of the effects if these effects are sold under this section, and the effects shall be sold by the proper officer in such manner as he thinks fit when they are delivered to him, unless the Board of Trade direct to the contrary, and, if not so sold, shall be sold by the Board as and when they think fit unless they are delivered to the seaman.

(7) The master shall be under no liability for any loss of effects or for any damage to the effects if he proves to the proper officer that the loss or damage occurred without his neglect or privity after the seaman left the ship.

(8) The Board of Trade shall not be under any liability with respect to anything done under this section, except that, if after the wages or effects of a seaman have been dealt with under this section, any legal proceedings are taken in respect of those wages or effects, or involving the forfeiture of those wages or effects, or of any sum out of the wages, by the seaman against the master or owner of the ship, or by the master or owner of the ship against the seaman, the Board shall, if notice is given to them of the proceedings, and a reasonable opportunity afforded to them of appearing, comply with any order of the court made as respects the wages or effects, so far as they can do so out of the wages and effects remitted to them in respect of the voyage of the ship, and, so far as those wages and effects are not required for reimbursing any expenses incurred by or on behalf of the Crown, or incurred by the Government of a foreign country and repaid to that Government by or on behalf of the Crown, as expenses of a distressed seaman on behalf of the seaman.

(11) The proper officer for the purpose of this section shall be—

(i) at a port in the U.K., a superintendent;

(ii) at a port in a British possession, a superintendent, or, in the absence of any such superintendent, the chief officer of customs at or near the port;

(iii) at a port elsewhere, the consular officer at the port.

(12) This section shall not apply in the case of an absent seaman—

(a) Where the master of the ship satisfies the proper officer that none of the effects of the seaman have to his knowledge been left on board the ship, and that he has paid all wages due to the seaman; or

(b) where the amount of wages earned by the seaman (after taking into account any deductions made in respect of allotments or advances for which provision is made by the agreement with the crew) appears from the agreement to be less than five pounds, and the master does not exercise his option to deal with the delivery and reimbursement accounts collectively; or

(c) where the master of the ship satisfies the proper officer that the net amount due to the seaman on account of wages (after taking

into account any deductions lawfully made in respect of allotments, advances, or otherwise) is less than three pounds, and the master does not exercise his option to deal with the delivery and reimbursement accounts collectively; or

(d) where the question of the forfeiture of the wages and effects of the seaman has been dealt with in legal proceedings lawfully instituted before the termination of the voyage, or within forty-eight hours of the arrival of the ship at the port at which the voyage terminates.

Discharge of seamen out of the U.K.

30.—(1) The master of a British ship shall not discharge a seaman at any place out of the U.K. (except at a port in the country in which he was shipped), unless he previously obtains, endorsed on the agreement with the crew, the sanction of the proper authority, but that sanction shall not be refused where the seaman is discharged on the termination of his service.

(2) The authority to whom an application is made for sanction under this section may, and, if not a merchant, shall, examine into the grounds on which a seaman is to be discharged at a place out of the U.K., and for that purpose may, if he thinks fit, administer oaths, and may grant or refuse the sanction as he thinks just, but such sanction shall not be unreasonably withheld.

Certificate of discharge abroad.

31.—Where the master of a British ship discharges a seamen at any place out of the U.K., he shall give to that seaman a certificate of discharge in a form approved by the Board of Trade, and, in the case of any certificated officer whose certificate he has retained, shall return that certificate to him.

Repatriation of seamen.

32.—(1) Where the service of a seaman belonging to a British ship terminates at a port out of His Majesty's dominions otherwise than by the consent of the seaman to be discharged during the currency of the agreement, the master of the ship shall, besides giving the certificate of discharge required under this Part of this Act, and besides paying the wages to which the seaman is entitled, make adequate provision in accordance with this Act for his maintenance and for his return to a proper return port, and the proper authority shall endorse upon the agreement with the crew of the ship which the seaman is leaving the particulars of any provision so made.

(2) If the master fails, without reasonable cause, to comply with this section, the expenses of maintenance and of the journey to the proper return port—

(a) if defrayed by the seaman, shall be recoverable as wages due to him; and

(b) if defrayed by the proper authority or by any other person, shall (unless the seaman has been guilty of barratry) be a charge upon the ship to which the seaman belonged, and may also be recovered against the person who is the owner of the ship for the time being, or, where the ship has been lost, against the person who was the owner of the ship at the time of the loss, or, where the ship has been transferred to some person not being a British subject, either against the owner for the time being

or against the person who was the owner of the ship at the time of the transfer.

(3) This section shall not apply in the case of a foreign seaman who has been shipped at a port out of the U.K. and discharged at a port out of the U.K.

Discharge of seamen on change of ownership.

33.—(1) Where a British ship is transferred or disposed of at any port out of His Majesty's dominions, any seaman belonging to that ship shall be discharged unless the seaman consents in writing in the presence of the proper authority to complete the voyage of the ship if continued.

(2) Where a seaman is so discharged the provisions of this Part of this Act as to the certificate of discharge, and the return of the seaman to a proper return port, shall apply as if the service of the seaman had terminated otherwise than by the consent of the seaman to be discharged during the currency of the agreement, and shall apply to foreign seamen whether they have been shipped at a port in the U.K. or not.

Medical attendance in case of injury or illness.

34.—(1) If the master of, or a seaman belonging to, a ship receives any hurt or injury in the service of the ship, or suffers from any illness (not being venereal disease, or an illness due to his own wilful act or default or to his own misbehaviour), the expense of providing the necessary surgical and medical advice and attendance and medicine and also the expenses of the maintenance of the master or seaman until he is cured, or dies, or is returned to a proper return port, and of his conveyance to the port, and in the case of death the expense (if any) of his burial, shall be defrayed by the owner of the ship, without any deduction on that account from his wages.

(2) If the master or a seaman is on account of any illness temporarily removed from his ship for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expense of the removal and of providing the necessary advice and attendance and medicine, and of his maintenance while away from the ship, shall be defrayed in like manner.

(3) The expense of all medicines, surgical and medical advice, and attendance, given to a master or seaman whilst on board his ship, shall be defrayed in like manner.

(4) In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman who dies whilst on service, shall, if duly proved, be deducted from the wages of the seaman.

Seamen left behind abroad.

36.—(1) The master of a British ship shall not leave a seaman behind at any place out of the U.K., ashore or at sea (except where the seaman is discharged in accordance with the M.S. Acts), unless he previously obtains, endorsed on the agreement with the crew, the certificate of the proper authority as defined for the purpose in this Part of this Act, stating the cause of the seaman being left behind, whether the cause be unfitness or inability to proceed to sea, desertion, or disappearance or otherwise.

(2) The authority to whom an application is made for a certificate under this section may, and, if not a merchant, shall, examine into the grounds on which a seaman is to be left behind, and for that purpose may, if he thinks fit, administer oaths, and may grant or refuse the certificate as he thinks just, but the certificate shall not be unreasonably withheld.

37.—Where a master of a British ship leaves a seaman behind on shore in any place out of the U.K. on the ground of his unfitness or inability to proceed to sea, he shall deliver to the person signing the required certificate of the proper authority a full and true account of the wages due to the seaman, and if that person is a consular officer shall deliver the account in duplicate.

Payment of wages of seaman left behind.

38.—(1) The master shall pay the amount of wages due to a seaman left behind on the ground of his unfitness or inability to proceed to sea, if he is left in a British possession to the seaman himself, and if he is left elsewhere to the British consular officer.

(2) Where payment is made to a British consular officer, that officer shall retain one duplicate of the account delivered to him, and, if satisfied with the account, endorse on the other duplicate a receipt for the payment, and return it to the master, and the master shall deliver the duplicate within forty-eight hours of his return to his port of destination, if that port is in the U.K. to the superintendent at that port, and, if that port is not in the U.K., to the proper authority.

Wages of seamen left behind.

39.—Where the amount of wages due to a seaman left behind on the ground of his unfitness or inability to proceed to sea is so paid to a British consular officer, that officer shall deal with the sum so paid to him in the following manner, namely :—

(1) If the seaman subsequently obtains employment at or quits the port at which the payment has been made, he shall deduct out of the sum any expenses incurred by him in respect of the maintenance of the seaman under the M.S. Acts, except such as the owner or master is by the M.S. Acts required to defray, and shall pay the remainder to the seaman, and deliver to him an account of the sums so received and expended on his behalf;

(2) If the seaman dies before his ship quits the port, he shall deal with the sum as part of the property of a deceased seaman ; and

(3) If the seaman is sent to a proper return port at the public expense under the M.S. Acts, he shall account for the sum to the Board of Trade; and the sum, after deducting any expenses duly incurred in respect of the seaman, except such expenses as the master or owner of the ship is required by the M.S. Acts to pay, shall be dealt with as wages of the seaman.

Relief and maintenance of distressed seamen.

41.—Where either—

(a) any seamen, whether subjects of His Majesty or not, are found in any place out of the U.K., and have been shipwrecked from any British ship or any of His Majesty's ships, or by reason of having been discharged or left behind from any such ship in any place out of the U.K., are in distress in that place, or

(b) any seamen, being subjects of His Majesty, who have been engaged by any person acting either as principal or agent to

serve in a ship belonging to the government or to a subject or citizen of a foreign country, are in distress in any place out of the U.K.,

the proper authority may, and, if not a merchant, shall, in accordance with and on the conditions prescribed by the distressed seamen regulations, provide in accordance with this Act for the return of those distressed seamen to a proper return port, and also provide for their necessary clothing and their maintenance until their departure for such a port, and, in addition, in the case of shipwrecked seamen for the repayment of any expenses incurred in their conveyance to port after their shipwreck, and their maintenance while being so conveyed.

Recovery of expenses of relief of distressed seamen.

42.—Where any expenses (other than excepted expenses as defined by this section) are incurred by or on behalf of the Crown, or are incurred by the government of a foreign country, and repaid to that government by or on behalf of the Crown, on account of a distressed seaman, either for his maintenance, necessary clothing, conveyance to a proper return port, or in case of death for his burial, or otherwise in accordance with this Act, those expenses (together with the wages, if any, due to the seaman) shall be a charge upon the ship, whether British or foreign, to which the distressed seaman belonged, and shall be a debt to the Crown from the master of the ship, or from the owner of the ship for the time being, or, where the ship has been lost, from the person who was owner of the ship at the time of the loss, or, where the ship has been transferred to some person not being a British subject, either from the owner for the time being or from the person who was the owner of the ship at the time of the transfer, and also, if the ship be a foreign ship, from the person, whether principal or agent, who engaged the seaman for service in the ship.

For the purposes of this section, excepted expenses are expenses incurred in cases where the certificate of the proper authority obtained on leaving a seaman behind states, or the Board of Trade are otherwise satisfied, that the cause of the seaman being left behind is desertion, or disappearance, or imprisonment for misconduct, or discharge from his ship by a naval court on the ground of misconduct, and expenses incurred on account of the return to a proper return port of a distressed seaman who has been discharged at the port at which he was shipped, or at some neighbouring port.

Penalty for forcing seamen on shore.

43.—A person belonging to a British ship shall not wrongfully force a seaman on shore and leave him behind or otherwise cause a seaman to be wrongfully left behind at any place, either on shore or at sea, in or out of His Majesty's dominions, and if he does so he shall in respect of each offence be guilty of a misdemeanour.

Deduction from wages, fines, &c.

44.—(1) Every fine imposed on a seaman for any act of misconduct for which his agreement imposes a fine shall be deducted as follows (that is to say) :—

(a) if the offender is discharged in the U.K. and the offence, and the entry in the log book required by the M.S. Acts in respect thereof, are proved to the satisfaction, in the case of a foreign-going ship of the superintendent before whom the offender is

discharged, and in the case of a home-trade ship, of the superintendent at or nearest the port at which the crew are discharged, the master or owner shall deduct the fine from the wages of the offender;

(b) if the offender enters His Majesty's naval service or is discharged abroad, and the offence and the entry as aforesaid are proved to the satisfaction of the officer in command of the ship he so enters, or of the proper authority by whose sanction he is discharged, as the case may be, the fine shall be deducted as aforesaid and an entry made in the official log book of the ship and signed by the officer or authority to whose satisfaction the offence is proved.

(2) Every fine so deducted shall be paid—

(a) if the offender is discharged in the U.K., to the superintendent;

(b) if the offender enters His Majesty's naval service, on the return of the ship to its port of destination, if that port is in the U.K., to the superintendent before whom the crew is discharged, or in the case of a home-trade ship to the superintendent at or nearest to the port at which the crew is discharged, and, if the port of destination is not in the U.K., to the proper authority;

(c) if the offender is discharged at any place out of the U.K. to the proper authority.

(3) A proper authority shall remit any amounts received by them under this section at such times and in such manner, and render such accounts in respect thereof, as the Board of Trade require.

Proper return port.

45.—For the purpose of this Part of this Act, either the port at which the seaman was shipped or a port in the country to which he belongs, or some other port agreed to by the seaman, in the case of a discharged seaman, at the time of his discharge, shall be deemed to be a proper return port:

Provided that in the case of a seaman belonging to a British possession who has been shipped and discharged out of the U.K. the proper officer may treat a port in the U.K. as a proper return port.

Mode of providing for return.

46.—(1) A seaman may be sent to a proper return port by any reasonable route, either by sea or land, or partly by sea and partly by land.

(2) Provision shall be made for the return of the seaman, as to the whole of the route if it is by sea, or as to any part of the route which is by sea, by placing the seaman on board a British ship which is in want of men to make up its complement, or, if that is not practicable, by providing the seaman with a passage in any ship, British or foreign, or with the money for his passage, and, as to any part of the route which is by land, by paying the expenses of his journey and of his maintenance during the journey, or providing him with means to pay those expenses.

(3) Where the master of a ship is required under this Part of this Act to provide for the return of a discharged seaman to a proper return port, the master may, instead of providing the seaman's passage, or the expenses of his journey, or of providing the seaman with means to pay his passage or those

expenses, deposit with the proper authority such sum as that authority consider sufficient to defray the expenses of the return of the seaman to a proper return port.

Decision of questions as to return of seamen.

47.—If any question arises as to what return port a seaman is to be sent to in any case, or as to the route by which he should be sent, that question shall be decided by the proper authority, and, in deciding any question under this provision, the authority shall have regard both to the convenience of the seaman and to the expense involved, and also, where that is the case, to the fact that a British ship which is in want of men to make up its complement is about to proceed to a proper return port.

Taking distressed seamen on ships.

48.—(1) Where a distressed seaman is, for the purpose of his return to a proper return port, placed on board a British ship, the authority by whom the seaman is so placed shall endorse on the agreement with the crew of the ship the name of the seaman so placed on board, together with any particulars directed to be endorsed by the distressed seamen regulations.

(2) The master of every British ship shall receive on board his ship, and afford a passage and maintenance to, all distressed seamen whom he is required under this Act to take on board his ship, not exceeding one for every fifty tons burden, and shall during the passage provide every such distressed seaman with a proper berth or sleeping place, effectually protected against sea and weather.

(3) On the production of a certificate, signed by the authority by whose directions any such distressed seaman was received on board, specifying the number and names of the distressed seamen and the time when each of them was received on board, and on a declaration made by the master before a justice of the peace, or any officer authorised to administer an oath, stating the number of days during which each distressed seaman has received maintenance, and stating the full complement of his crew and the actual number of seamen employed on board his ship, and every variation in that number, whilst the distressed seamen received maintenance, the master shall be entitled to be paid, in respect to the maintenance and passage of every seaman so conveyed, maintained, and provided for by him, exceeding the number (if any) wanted to make up the complement of his crew, such sum per diem as the Board of Trade allow.

49.—For the purposes of this Part of this Act, unless the context otherwise requires—

(1) The expression "proper authority" means—

(a) as respects a place out of His Majesty's dominions, the British consular officer, or, if there is no such officer in the place, any two British merchants resident at or near the place, or, if there is only one British merchant so resident, that British merchant; and

(b) as respects a place in a British possession—

(i) in relation to the discharge or leaving behind of seamen, or the payment of fines, a superintendent, or, in the absence of any such superintendent, the chief officer of customs at or near the place; and

(ii) in relation to distressed seamen the governor of the possession, or any person acting under his authority; and

(2) The expression "seamen" includes not only seamen as defined by the principal Act, but also apprentices to the sea service.

PART V.—MISCELLANEOUS.

56.—A ship of one hundred tons burden or upwards engaged in foreign trade shall have at least one officer besides the master holding a certificate not lower than that of—

(i) mate in the case of a home trade passenger ship;

(ii) second mate in the case of a foreign-going sailing ship of not more than two hundred tons burden; and

(iii) only mate in the case of any other foreign-going ship.

Notice of disrating of seaman.

59.—Where the master of a ship disrates a seaman he shall forthwith enter or cause to be entered in the official log-book a statement of the disrating, and furnish the seaman with a copy of the entry; and any reduction of wages consequent on the disrating shall not take effect until the entry has been so made and the copy so furnished.

Obligation to offer allotment notes.

61.—In order to give effect to the provisions of section 141 of the principal Act enabling a seaman to require a stipulation for the allotment of his wages by means of an allotment note every superintendent or other officer before whom the seaman is engaged shall, after the seaman has signed the agreement, inquire of the seaman whether he requires such a stipulation for the allotment of his wages by means of an allotment note, and if the seaman requires such a stipulation shall insert the stipulation in the agreement with the crew, and any such stipulation shall be deemed to have been agreed to by the master.

62.—A payment under an allotment note shall begin at the expiration of one month from the date of the agreement with the crew and shall be paid at the expiration of every subsequent month after the first month, and shall be paid only in respect of wages earned before the date of payment.

Facilities to seamen for remitting wages.

63.—Where the balance of wages due to a seaman is more than ten pounds, and the seaman expresses to the master of the ship his desire to have facilities afforded to him for remitting all or any part of the balance to a savings bank, or to a near relative in whose favour an allotment note may be made, the master shall give to the seaman all reasonable facilities for so doing so far as regards so much of the balance as is in excess of ten pounds, but shall be under no obligation to give those facilities while the ship is in port if the sum will become payable before the ship leaves port, or otherwise than conditionally on the seaman going to sea in the ship.

SCALE OF PROVISIONS.

—	Water.	Soft Bread.	Biscuit.	Salt Beef.	Salt Pork.	Preserved Meat.	Fish.	Potatoes.	Dried or Compressed Vegetables.	Peas, Split.	Peas, Green.	Calavances or Haricot Beans.	Flour.	Rice.	Oatmeal.	Tea.	Coffee.	Sugar.	Milk, Condensed.	Butter.	Marmalade or Jam.	Syrup or Molasses.	Suet.	Pickles.	Dried Fruits.	Fine Salt.	Mustard.	Pepper.	Curry Powder.	Onions.
	qts.	lbs.	lbs.	lbs.	lbs.	lbs.	lb.	lbs.	lb.	pint	pint	pint	lbs.	lb.	oz.	oz.	oz.	lbs.	lb.	lb.	lb.	lb.	oz.	pint	oz.	oz.	oz.	oz.	oz.	oz.
SUNDAY ...	4	1	...	½	...	¾	...	...	...	...	...	...	½	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
MONDAY ...	4	...	1	...	1	...	...	...	...	...	...	...	...	¼	...	...	...	...	...	...	...	...	...	...	...	...	...	..	..	3
TUESDAY ...	4	1	...	1¼	...	...	...	...	...	...	...	...	½	...	4	...	...	...	...	...	...	...	...	...	...	...	...	..	...	...
WEDNESDAY	4	...	1	...	...	¾	...	...	...	...	...	...	½	...	...	...	...	...	...	...	...	..	...	...	...	..	...	...	..	...
THURSDAY ...	4	1	...	...	1	...	..	...	...	...	...	...	...	¼	...	...	...	...	...	...	...	...	...	...	...	..	...	...	...	...
FRIDAY ...	4	...	1	...	...	¾	¾	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
SATURDAY ...	4	...	1	1¼	...	...	...	...	...	...	...	...	½	...	4	...	...	...	...	...	...	...	...	...	...	...	...	..	...	...
WEEKLY ...	28	3	4	3	2	2¼	¾	6	½	⅜	⅓	⅓	2	½	8	1¾	4	1¼	⅓	½	1	½	4	½	5	2	¼	¼	¼	3

CONDITIONS AND EXCEPTIONS IN APPLYING SCALE.

1. The issue of provisions for which a total weekly, and no daily, amount is given in the above scale shall be reasonably distributed throughout the week.

2. The issue of soft bread under the scale shall not be required—

(*a*) in a ship of less than one thousand tons gross registered tonnage; or

(*b*) if rough weather renders the making of the bread impracticable; or

(*c*) in any ship until the date of the first agreement with the crew entered into after the first day of January nineteen hundred and eight;

but where soft bread is not issued, an equivalent amount of biscuit shall be issued instead.

3. An equal quantity of fish, up to an amount not exceeding three-quarters of a pound in any one week, may be substituted for preserved meat under the above scale.

The fish issued, whether under the scale or as a substitute, must be fresh fish, dried fish, or canned salmon or canned herrings.

4. Within the tropics, a pound and a half of preserved meat or three pounds of fresh meat may be substituted for two pounds of salt pork.

5. Fresh potatoes must be issued for at least the first eight weeks of the voyage in the case of every ship leaving a port within the home trade limits at any time between the last day of September and the first day of May, and at any other time when they can be procured at a reasonable cost.

When fresh potatoes are not so issued, an equal amount of yams, or vegetables preserved in tins, or an equivalent amount of dried or compressed potatoes or dried or compressed vegetables in the proportion of one pound to six pounds of fresh potatoes, must be issued in their place.

6. Fresh vegetables, or vegetables preserved in tins, may at any time be substituted for dried or compressed vegetables in the proportion of half a pound of fresh vegetables, or vegetables preserved in tins, to one ounce of dried or compressed vegetables.

7. A mixture of coffee and chicory containing not less than seventy-five per cent. of coffee may at any time be substituted for coffee in the proportion of five ounces of the mixture to four ounces of coffee.

8. The dried fruit issued under the above scale must be raisins, sultanas, currants, figs, or prunes.

9. The onions to be issued under the above scale must be fresh onions when in season; and, when fresh onions are not in season, an equal amount of onions or vegetables preserved in tins, or an equivalent amount of dried or compressed onions or vegetables in the proportion of one ounce to half a pound of fresh onions must be issued.

10. In port—

(*a*) soft bread shall be issued in lieu of biscuit; and

(*b*) when procurable at a reasonable cost, a pound and a half of fresh meat and half a pound of fresh vegetables shall be issued daily, and, when fresh meat and fresh vegetables are so issued, salt and preserved meat and dried or compressed vegetables need not be issued.

11. The stokehold hands are to receive sufficient oatmeal and one quart of water extra daily while under steam.

SUBSTITUTES AND EQUIVALENTS.—NOT TO BE USED WITHOUT REASONABLE CAUSE.

Fresh Meat	1½ lb.	To be considered equal.
Salt Meat	1 ,,	
Preserved Meat	¾ ,,	
Coffee	⅝ oz.	To be considered equal.
Cocoa	½ ,,	
Tea	¼ ,,	
Flour	1 lb.	To be considered equal.
Biscuit	1 ,,	
Rice	1 ,,	
Split Peas	⅓ pt.	To be considered equal when issued with Meat rations.
Flour	¾ lb.	
Calavances or Haricot Beans	⅓ pt.	
Rice	¾ lb.	
Marmalade	1 lb.	To be considered equal.
Jam	1 ,,	
Butter	½ ,,	
Mustard	..	To be considered equal.
Curry Powder	..	

(15.)—CHAMBER OF SHIPPING WELSH COAL CHARTER, 1896.

It is this day mutually Agreed between
Owner of the good Screw-Steamer called the classed
of tons net register tons dead weight, exclusive of bunkers
or thereabouts. Master, now , and expected
ready to load about
and . As Agents for the Charterers,

1. THAT the said Steamer being tight, staunch, and strong, and every way fitted for the Voyage, shall, with all possible dispatch, sail and proceed to and there load, always afloat, in the customary manner, from the Charterers, in such Dock as may be ordered by them on or before arrival in Roads a full and complete Cargo of Coal not exceeding tons, nor less than tons, and not exceeding what she can reasonably stow and carry, over and above her Tackle, Apparel, Provisions, and Furniture; and being so loaded shall therewith proceed, with all possible dispatch, to or so near thereunto as she can safely get, and there deliver her cargo alongside any Wharf, and/or Vessel, and/or Craft, as ordered, where she can safely deliver, always afloat, but if required to shift, the expense of so doing to be paid by Consignees, and the time to count; on being paid Freight at the rate of per ton of 20 cwts. or 1,015 kilos delivered, or on Bill of Lading quantity less two per cent., at Receiver's option, to be declared in writing before bulk is broken. If the Receiver should elect to weigh the Cargo at the port of destination the weighing shall be done (by an official weigher) at his expense. The Owner may provide a check weigher at Steamer's expense. Should any deficiency be alleged on the authority of such weighing, it shall affect the freight only, from which no deduction shall be made for alleged shortage of cargo, any custom of the port of discharge notwithstanding, but the Owner shall furnish, if required, a Statutory Declaration by the Master and other officers that all the Cargo received on board has been delivered. The freight is in full of Trimming, and of all Port Charges, Pilotages, and Consulages on the Vessel. All Wharfage dues on the Cargo to be paid by the Charterers.

2. A sailing telegram to be sent to the Charterers on Steamer leaving her last port, or in default twenty-four hours more to be allowed for loading.

3. The Cargo to be loaded in running hours (excluding Bunkering time, Sundays, Custom House, Colliery, and Local Holidays, Easter Monday and Tuesday, Whit Monday and Tuesday, and three days following Christmas Day, and from 5 p.m. on Saturday or the day previous to any such holiday to 7 a.m. on Monday or the day after any such holiday unless used) commencing when written notice is given of Steamer being completely discharged of inward cargo and ballast in all her holds and ready to load, such notice to be given between business hours of 9 a.m. and 5 p.m., or 1 p.m. on Saturdays. Any time lost through riots, strikes, lock-outs, or any dispute between masters and men occasioning a stoppage of pitmen, trimmers, or other hands connected with the working or delivery of the coal for which the Steamer is stemmed, or by reason of accidents to mines or machinery, obstructions on the Railway or in the Docks; or by reason of floods, frosts, fogs, storms, or any cause beyond the control of the Charterers, not to be computed as part of the loading time (unless any cargo be actually loaded during such time). In the event of any stoppage or stoppages arising from any of these causes continuing for the period of six running days from the time of the vessel being ready to load, this Charter shall become null and void, provided, however, that no Cargo shall have been shipped on board the Steamer previous to such stoppage or stoppages. In case of partial holiday or partial stoppage of the Colliery or Collieries from any or either of the aforenamed causes, the lay hours to be extended proportionately to the diminution of output arising from such partial holiday or stoppage. If longer detained, Charterers to pay Sixteen Shillings and Eightpence per running hour demurrage. No deduction of time shall be allowed for stoppages, unless due notice be given at the time to the Master or Owner. Any question arising under this clause shall be referred to a Committee, consisting of one Shipowner, to be nominated by the Cardiff Shipowners Association, and one Colliery owner, to be nominated by the Monmouthshire and South Wales Coal Owners' Association, and should they be unable to agree, the decision of an Umpire selected by them shall be final.

4. The Cargo to be trimmed by men appointed by the Charterers at the Tariff rate of the Port.

5. Bunker Coals to be kept properly separated from Cargo to Charterers' satisfaction at the Steamer's expense and the quantity to be endorsed on the Bills of Lading. If any Cargo is carried in a hold communicating directly with the Stokeholds, the doors to be securely fastened on the Cargo side.

6. The Bills of Lading shall be prepared in accordance with the Dock or Railway weight in the form endorsed on this Charter, and shall be signed by the Master, Agent, or Owner, weight unknown, freight and all conditions as per this Charter, such Bills of Lading to be signed at the Charterers' or Shipper's Office, within twenty-four hours after the steamer is loaded.

7. The Act of God, the King's Enemies, Restraints of Princes and Rulers, and Perils of the Seas excepted. Also Fire, Barratry of the Master and Crew, Pirates, Collisions, Strandings and Accidents of Navigation, or latent defects in, or accident to, Hull and/or Machinery, and/or Boilers, always excepted, even when occasioned by the negligence, default, or error in judgment of the Pilot, Master, Mariners, or other persons employed by the Shipowner, or for whose acts he is responsible, not resulting, however, in any case from want of due diligence by the Owner of the Ship, or by the Ship's Husband or Manager. Charterers not answerable for any negligence, default, or error in judgment of Trimmers or Stevedores employed in loading or discharging the Cargo. The Steamer has liberty to call at any ports in any order, to sail without Pilots, to tow and assist vessels in distress, and to deviate for the purpose of saving life or property.

8. The Cargo to be taken from alongside by Consignees at port of discharge, free of expense and risk to the Steamer, at the average rate of tons per day, weather permitting, Sundays and holidays excepted, provided steamer can deliver it at this rate; if longer detained Consignees to pay Steamer demurrage at the rate of fourpence per net register ton per running day (or *pro rata* for part thereof). Time to commence when steamer is ready to unload and written notice given, whether in berth or not. In case of strikes, lock-outs, civil commotions, or any other causes or accidents beyond the control of the Consignees which prevents or delays the discharging, such time is not to count, unless the Steamer is already on demurrage. Consignees to effect the discharge of the Cargo, Steamer paying per ton of 20 cwt., or 1,015 kilos, and providing only steam, steam winches, winchmen, gins, and falls.

9. The FREIGHT to be paid if required by the Owner, on signing Bills of Lading (Ship lost or not lost), in Cash, less per cent. for Insurance and Interest (the Owner or his Agent giving Charterers or Shippers written notice before the Steamer commences loading, if any advance freight is required), and the remainder on right delivery of the Cargo; sufficient cash for Steamer's ordinary disbursements at current exchange, and the balance (unless otherwise arranged between the Owners and Charterers) by a good and approved Bill on London at three Months' date, or in Cash equal thereto at Captain's option. The Receivers of the Cargo to be bound to pay freight on account during delivery, if required by the Captain. The Charterers' account at port of loading to be paid when rendered, otherwise the Charterers may deduct it on settlement of freight at port of destination (together with a charge of three per cent. to cover all charges including Insurance and Interest).

10. The Steamer to be free of address at Port of Discharge, but to pay the usual Commission of Two per cent. on the amount of Freight on signing Bills of Lading.

11. In case of Average, the same to be settled according to the York/Antwerp Rules, 1890, and as if the Vessel were British. Should the Vessel put into any Port or Ports leaky or with damage, the Captain or Owner shall without delay inform the Charterers thereof.

12. Loading hours not to commence before 9 a.m. on and if Ship be not ready in loading dock as ordered before 9 a.m. on or if any wilful misrepresentation be made respecting the size, position or state of the Steamer, Charterers to have the option of cancelling this Charter, such option to be declared on notice of readiness being given.

13. The Charterers' liability shall cease as soon as the Cargo is shipped, and the advance of Freight, Dead Freight, Demurrage in Loading (if any) are paid, the Owner having a lien on the Cargo for Freight, Demurrage, and Average.

14. Penalty for non-performance of this Agreement, proved damages, not exceeding the estimated amount of Freight.

15. The Brokerage of Five per cent. is due to on the Cargo being loaded.

Witness to the Signature of

Witness to the Signature of

(16).—CHAMBER OF SHIPPING WELSH COAL B/L.

Shipped in good order and condition by
of in and upon the good
Steamship called the whereof
is Master for this present
Voyage and bound for with
liberty to call at any ports in any order, to sail without Pilots, and to tow and assist vessels in distress, and to deviate for the purpose of saving life or property;

CARGO.

tons in hold.
tons in do.
tons in do.
tons in do.

Total Tons.

COALS ON BOARD FOR SHIP'S USE INDEPENDENT OF CARGO.

tons in
tons in
tons in bunkers.

tons in bunkers on arrival.

Total Tons.

Received on Account of Freight Pounds, Shillings, and Pence, on which Insurance and Interest have been paid.

£

which are to be delivered in the like good order and condition at the said Port of

The Act of God, the King's Enemies, Restraint of Princes and Rulers, Perils of the Seas excepted. Also Fire, Barratry of the Master and Crew, Pirates, Collisions, Strandings, and Accidents of Navigation, or latent defects in, or accidents to, Hull and/or Machinery, and/or Boilers always excepted, even when occasioned by the negligence, default or error in judgment of the Pilot, Master, Mariners, or other Persons employed by the Shipowner, or for whose Acts he is responsible, not resulting, however, in any case from want of due diligence by the Owner of the Ship, or by the Ship's Husband or Manager.

unto or Assigns he or they paying Freight for the same as per Charter Party dated 19 , all the terms and exceptions contained in which Charter are herewith incorporated.

General average payable according to York/Antwerp Rules, 1890.

IN WITNESS whereof the Master or Agent of the said Ship hath signed Bills of Lading all of this tenor and date, drawn as a set consecutively numbered, any one of which being accomplished the others to be void.

19

WEIGHT UNKNOWN.

LONDON, 191

(17).—CHAMBER OF SHIPPING AZOFF BERTH NOTE.

Messrs. Owners of the good Steamer called flag and classed of the maximum deadweight cargo capacity of tons, now

We beg to confirm on behalf of (acting as Agents for Owners' Account) the engagement from one or various shippers for this Steamer on the following berth terms, a full and complete cargo of about tons of Wheat and/or other Grain and/or Seed to be loaded at one or two safe ports in the Sea of Azoff, always afloat.

(Orders for loading port to be given at Kertch by Freighters' Agents within six hours of daylight after Steamer's arrival or lay days—Sundays only excepted—to count, but in no case shall Charterers be obliged to give the orders more than 48 hours prior to the date on which lay days are stipulated to commence.)

for a safe port in the United Kingdom, or a safe port on the Continent between Havre and Hamburg inclusive, or so near unto as she may safely get, always afloat. as ordered on signing Bs/L at the rate of

but if Steamer is ordered to Hamburg, rate to be

all per unit delivered according to the 1890 Scale, as per margin.

SCALE OF UNITS for Freight.

	English lbs.	kilogrammes.
Wheat ... Maize ... Peas ..... Beans ... Milletseed	2,240	1,015
Rye ..... Dari ..... Canary Seed	2,200	1,006
Linseed ... Rapeseed	2,170	983
Dodder ... Cameline	2,100	951
Barley ... Mustard Seed Sesame ...	2,050	929
Hempseed	1,800	815
Oats	1,600	725
Poppyseed	1,400	634

1. Shippers are not bound to load before n/s. running days (Sundays and non-working Holidays excepted), to be allowed for sending cargo alongside. Captain to declare in writing on his arrival at loading port, or at least three days before the time for sending cargo alongside has expired, the deadweight quantity of cargo required, also the cubic capacity of the steamer for grain. Demurrage, if any, to be paid at the rate of £ per running day. Shipper or Shippers have the option of cancelling their engagements if the Steamer is not in every respect ready to load at first loading port by 4 p.m. on the n/s.

2. Charterers have the option of loading Steamer at two safe ports in the Azoff, in which case the rate of freight to be increased by per unit on the entire cargo.

3. Owners agree to allow a reduction of per unit on any barley shipped.

4. The 1890 Azoff General Produce Bill of Lading and/or the 1902 Chamber of Shipping Bill of Lading to be used, with Lighterage Clause (No. 12) and the Strike Clause (No. 13) of the 1890 Azoff Charter incorporated, and the said Strike Clause (No. 13) is to apply to the loading port as well as discharging port, and all conditions and exceptions of the 1890 Azoff Charter to apply.

5. Should Steamer be ordered to a Weser port, final orders to be given on Steamer's arrival in the River.

6. Should Steamer be ordered to London, Tilbury Dock excluded.

7. Should the Steamer be ordered to Marioupol or Berdiansk to load, Charterers have the option of loading a portion of the cargo (Steamer always afloat) in the new harbour.

8. Two and a half per cent. Address Commission is payable on the gross amount of freight, dead freight, and demurrage (if any) on shipment of cargo to , to whom and/or his Agents, at loading ports the Steamer is to be consigned, paying £8 8s. for Custom House business, if loaded at one port, and £2 2s. extra if loaded at a second port.

9. The Captain is to telegraph his departure from his last port of outward discharge (unless taking cargo to the loading port), and from Constantinople to (failing which three days are to be added to the lay days).

10. The Shippers engage to supply the necessary mats for dunnage and separating the different parcels, or to pay the usual mat money for same.

11. The Master to sign Bills of Lading as tendered without prejudice to this Berth Memorandum, difference between chartered freight and freight payable under Bills of Lading to be settled at port of loading before the Steamer sails, difference in favour of Steamer to be paid in cash less insurance, if in favour of Charterers by Bill on Master's Owners at 30 days' sight.

12. In the event of any dispute arising under this Berth Contract, same to be settled by Arbitration in London, each Party appointing an Arbitrator, and should they be unable to agree, the decision of an Umpire selected by them to be final. The Arbitrators and Umpire to be Commercial men and resident in London.

13. Freighters' liability under this Contract to cease when cargo is shipped.

(18).—THE SHIPPING FEDERATION.

The year 1890 was marked by a rapid spread of the principles of Trades Unionism, and perhaps no Union made greater advance in that year, nor seemed likely to exercise greater power, than did the National Amalgamated Sailors' and Firemen's Union; it may be questioned, too, whether any Trade Union has gained as large a degree of notoriety on the one hand, with so little corresponding benefit for its members on the other.

Policy of Seamen's Union.

One of the leading features in the policy of this Union was to exclude from employment on British vessels all seamen who did not pay into its coffers, whether or not such seamen belonged to other unions. In pursuance of this policy, Union delegates, whose chief qualifications for office would appear to have been the possession of weight and muscle were posted about the shipping offices to demand from all seamen seeking engagement the production of a Union ticket of membership, or, failing this, the money necessary to procure one; and the unfortunate man who was unable or unwilling to pay up fared badly at their hands.

When, in spite of intimidation, non-union men succeeded in getting shipped, those members of the crew who belonged to the union were "called out" from the vessel, and by a process of "picketing," others were forcibly prevented from taking their places. The ship was thus "blocked" until the obnoxious men were either discharged or compelled to join the Union, the necessary entrance fees being in many cases paid by the shipmaster, who could not afford to detain his vessel at the point of sailing in order to procure a fresh crew.

How long this tyranny of an organised minority over the uncombined majority of seamen would have been endured it is difficult to say, but the climax was reached when the leaders of this Union conceived the design of bringing *masters and officers* under their control by forcing them to become members of an organisation of which the general secretary of the Union was (to quote the exact words of the rule) "*to have the entire working and control and supervision, as fully and effectually as if he were the acting manager of a large business.*"

Origin of the Federation.

Then it was that shipowners became alive to the gravity of the situation, and began to ask themselves whether it was not time to make a united and determined stand against such aggressive action. The urgency of the case was admitted on every hand, and within one month of its first suggestion the Shipping Federation had not only a real existence, but, as constitututed was even then, in all probability, the most powerful trade organization in existence.

Constitution of the Federation.

On the 2nd of September, 1890, at a preliminary conference of shipowners and their representatives the following resolutions (*inter alia*) were unanimously adopted:—

(1.) That an Association be and is hereby formed to be named the "Shipping Federation."

(2.) That the objects of the Federation are to deal with labour questions of all kinds; to indemnify shipowners whose vessels are detained by the authority or in consequence of the measures taken by the Federation; to protect the officers, crews, or servants of shipowners against intimidation on the part of trades organisations, or their members, &c.

(3.) That the membership shall consist of Protecting and Indemnity Associations of Steamers and Sailers, Steam and Sailing Ship Companies, and of individual Shipowners not entered in Protecting and Indemnity Associations.

(4.) That the Central Offices shall be situated in London, with such Local Committees and Offices at the outports as the Executive Committee may hereafter determine. That Mr. Geo. A. Laws be appointed Secretary of the Federation.

(5.) That the following gentlemen are hereby appointed a sub-committee, with authority to act as may be required, until the first meeting of the Executive Committee nominated by the various Associations, Companies, and Shipowners, with power to add to their number:—

Mr. T. L. Devitt, *President Chamber of Shipping.*
,, E. L. Dawes. Mr. Wm. Milburn, Junr.
,, John Glover. ,, T. R. Miller.
,, F. A. Holman. ,, W. M. Roche.
,, Alex. Howden. ,, Thomas Scrutton.
Mr. E. H. Watts.

On the 30th of September, 1890, the "Shipping Federation, Ltd,," was duly incorporated as a company limited by guarantee under the Companies Act, 1862 to 1890, with a very wide memorandum of association under which its objects were fully covered, and was already assured of the support of about 6,000,000 tons of shipping.

The tonnage entry is now about 12,000,000 tons.

According to the Articles of Association:—

The funds for carrying on the business of the company shall be obtained by means of calls, from time to time to be made upon members, in the proportion which the tonnage entered by each bears to the total tonnage entered; but members owning sailing ships only to pay upon one-third of such tonnage entered by them.

The business and affairs of the Company shall be conducted under the control and supervision of an Executive Council, consisting of representatives elected by the various members of the Company. Each Member shall be entitled to elect a representative on the Executive Council, in accordance with the following scale:—

For the first complete 100,000 tons entered.	One representative.
,, 150,000 entered.	Two representatives.
,, each complete 100,000 tons entered beyond the first 100,000 tons.	One additional representative.

Representatives shall be elected by members on or before the 31st of March in each year.

The Executive Council is invested with the fullest power and authority with reference to litigation, and to the dealing with the funds of the Company. Unless otherwise determined, five members present in person shall be a quorum. The Executive Council may delegate any of their powers to a Committee or Committees, consisting of such members of their body as they, in their absolute discretion may think fit.

The following is a brief sketch of the method of working of the Federation.

Federation Committees.

The Executive Council—the supreme governing body—comprise some 100 members, and meets in the ordinary course twice annually. It debates and determines all important questions of policy, receives the reports of its Committees appointed to deal with special branches of the work, and hears and decides all appeals against the decisions of such Committees. These Committees are as follows:—(1) General Purposes; (2) Legal and Indemnity; (3) Finance; (4) Benefit Fund; (5) Tonnage. They meet quarterly, and discharge the functions indicated by their titles.

There is a sixth or "Emergency" Committee, composed of the Chairman and Vice-Chairman of the Executive Council, and the Chairmen of the various Committees, which meets when required to deal with any questions of urgency which may arise between meetings of the Executive Council or Committees. So much for what may be termed the central organisation.

In addition, in order that the Council may always have the advantage of local knowledge and experience to guide its deliberations, the United Kingdom is divided into twenty-two shipping centres, each of which is under the supervision of a District Committee acting under the direct control of the Council. These Committees consist of members of the Council resident in the district, together with other local shipowners approved by the Council. They supervise the working of the registry offices and report periodically to the Council on all matters connected with the labour movement in their districts. The district Secretaries are in daily correspondence with the chief office, which is thus always in close touch with every member, and ready to take prompt action when required.

The general scope of the operations of the Federation in actual practice may be outlined as follows :—

Scope of operations.

The Federation secures to every man employed by its members, freedom to work at his own terms without interference, whether he belongs to any Union or not, but it does not aim at excluding members of any Union from employment.

Where attempts are made to prevent men (whether sailors, labourers, or others) accepting work on offer, or to cause them to break engagements they have made, the Federation proceeds against those who break the law, protects those who are threatened, and supplies substitutes as may be required.

It further protects masters, officers, and men, who are threatened in any way in consequence of their not belonging to any Union, and prosecutes those who threaten.

The Federation does not enter into disputes respecting wages, but assists owners in procuring crews and labourers at current rates. It compensates members who detain or lay up their vessels under agreement with the Federation in furtherance of, or in the carrying out of any of the above-named objects. So far as labour difficulties are concerned, the procedure for setting the machinery in motion is simple. The owner or master of a vessel who finds himself in a difficulty at once applies to the Secretary for the district in which the trouble has arisen, who convenes a meeting to consider the matter. The chief office is communicated with, and (after a meeting of the Emergency Committee has been held if required) steps are taken to relieve the position.

In the same way claims for indemnity are in all cases first sent to the secretary for the district in which the expenditure took place. The District Committee then examines and reports on the facts to the Indemnity Committee, by whom the amount of the indemnity is assessed.

Since the establishment of the Shipping Federation, its basis of action has broadened considerably. It has been found that the machinery of the organisation which was primarily designed to cope with strikes and

other labour troubles, might be utilised in many directions to the advantage of shipowners. Practically all questions relating to the "personnel" of the British mercantile marine are dealt with by the Federation. Records of seamen who have been guilty of desertion, failure to join, or other form of misconduct, are kept at the Federation Registry Offices, and such men are suspended from employment for a certain period proportionate to the nature and gravity of the offence. Matters of principle, affecting contracts between shipmasters and seamen are also dealt with, and members are supported in legal proceedings arising out of such forms of contract as may be from time to time recommended by the Federation. Seamen who desert from members' vessels, or are guilty of insubordination, are, if engaged through the Federation Registry Offices, prosecuted. The Federation has also in operation a scheme for the supply of boy sailors, upon whom a close surveillance is kept during the period of their service, through the medium of the various registry offices. The organisation of the Federation lends itself well to the requirements of a scheme of this description, and owing to the system adopted, desertion on the part of apprentices, which has hitherto been a great obstacle to their employment, has been considerably lessened.

So far as seamen generally are concerned, there is no doubt that the action of the Federation has been beneficient in its effect. The centralising of the supply of seamen through the Federation Registry Offices has, by lessening the competition between boarding masters, which formerly existed, done much to steady wages, an effect which has been precisely opposite to that which was predicted by the Union leaders who on the first establishment of the Federation endeavoured to prejudice the minds of seamen against the organisation by stating that its principal object was to bring about a reduction in wages. The statistical records of the Board of Trade on the subject during the existence of the Federation completely prove the falsity of these predictions. The seaman, too, is now free to seek work without the necessity of paying contributions to any Seamen's Union, unless he is so minded. Should he, however, desire to join any such organisation, his doing so does not prejudice his employment.

The early history of the Federation is chiefly concerned with the introduction of the "Federation ticket," and its frequent conflicts with the Seaman's and other Trade Unions have all been waged on the question of "Freedom of contract," of which the ticket is the symbol. The "ticket" has been generally accepted by seamen of all grades and is now recognised as a permanent institution, and has proved a great aid to the selection of good men as well as the maintenance of discipline at sea.

The system of medical examination of seamen instituted by the Federation has continued to work smoothly and has admittedly proved of value in helping on the one hand to secure efficient crews and on the other in minimising the shipowners' obligations *re* the maintenance and repatriation of sick seamen. At a joint meeting of Shipowner's and Managers of Protection Associations, &c., a resolution in the terms hereinafter set forth was adopted :—

> "That this Conference is of opinion that the full advantages of the system of medical examination of seamen can only be secured if the system be adopted by all shipowners, and they accordingly recommend the Protection Associations to require that the crews of foreign-going vessels entered in such Associations

(excepting masters and officers and substitutes, whose examination would cause delay to the ship), shall be medically examined before engagement on each voyage commencing in the United Kingdom or Continent of Europe within Home Trade limits, and that crews (as defined above) of coasting vessels or vessels under six monthly articles shall be examined upon engagement, and subsequently upon each opening of six monthly articles, always provided that facilities for such examination have been arranged by The Federation at the port of engagement or shipment of such crews or members thereof.

"In the case of masters and officers the Conference considers that a medical examination once in twelve months should be accepted as sufficient compliance with the rule, masters and officers to have the option of being examined free on the premises of The Shipping Federation, or privately at their own expense by a medical examiner satisfactory to The Federation.

"That the Conference considers that in order to secure compliance with this rule owners should be required to bear the first £5 (but not exceeding £50 in respect of any one voyage) of each claim under the Workmen's Compensation Act, 1906, arising in the case of a seaman who has been engaged without medical examination as provided above."

The apprentice scheme of The Federation continues to show excellent results, and is still the only practical organised system in existence for the regular supply of new blood to the mercantile marine, except the training ships. The results given by these institutions appear, however, to be less satisfactory than those of the Federation scheme.

The Federation Schools of Nautical Cookery continue to do useful work, and at the Universal Cookery and Wood Exhibition held at Westminster in November, 1910, provided an exhibit of the actual amount of food supplied to seamen under the statutory food scale, together with a demonstration of the dishes which can be prepared from the statutory allowance by a competent cook. The exhibit proved of the greatest interest and it is hoped that it will in some measure have served to enlighten public opinion upon a subject in relation to which considerable misconception exists. Glasgow and Cardiff appear to afford the greatest number of candidates for the certificates of competency and in all upwards of 1,200 have been granted.

A movement is on foot to bring about the federation of the British Trade Unions concerned in the transport industry, with the object of controlling and conducting disputes in the trades and occupations covered by the Federation. A conference of the principal Unions has been held, at which it was resolved that immediate steps should be taken to establish such a Federation.

The Shipping Federation has been affiliated with the International Shipping Federation which commenced operations at the beginning of 1910. This affiliation is likely to be of very considerable benefit to British Shipowners and there is good ground for believing that the association between the British Federation and the Foreign Federations will be permanent and harmonious, thus constituting an almost impregnable defence against the agression of Trade Unions whether combined or otherwise. The International Shipping Federation had to deal with a strike at the Weser ports in 1910, which resulted in the detention of several British and foreign vessels, to all of whom indemnity has been paid.

(19.)—DECLARATION OF PARIS (1856) AND THE DECLARATION OF LONDON (1909).

The following Declaration was in 1856 signed by accredited representatives of all the recognised maritime powers, save the United States, Spain, Mexico and Venezuela :—

1. *Privateering is and remains abolished.*

2. *The neutral flag covers enemy's goods, with the exception of contraband of war.*

3. *Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag.*

4. *Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the coasts of the enemy.*

Spain and Mexico adopted the last three articles, but declined to accede to the entire declaration. The United States also adopted the same three articles and offered to adopt the first also with the following addition :—"*and the private property of the subjects or citizens of a belligerent on the high seas, shall be exempted from seizure by public armed vessels of the other belligerent, except it be contraband.*" This offer was not accepted.

(1) Privateering.

Though formerly sanctioned by the law of every maritime nation, the practice of privateering, liable as it was to great abuse, may now be regarded as a thing of the past. It was undoubtedly a powerful agent for the destruction of an enemy's commerce; but on the other hand it served as a cloak for much lawless depredation, and for the operation of the selfish rather than the patriotic instincts of the combatants. Should either of the powers which have not as yet given their assent to the Declaration of Paris become engaged in naval warfare, the question of privateering will be an entirely open one. In the interests of commerce it is most desirable that there should be a generally agreed principle, and that some practical definition of what is and what is not a privateer should be arrived at. Furthermore, the extent to which and the circumstances under which the merchant ships of any nation can be made use of in time of war remains an open question.

(2.) Free ships free goods.

The principle of international law, which renders free from seizure the property of an enemy if in a neutral bottom, has been the subject of controversy for centuries past, at one time rejected and now again adopted in public treaties. Although jurists in the United States have recognised the right of capturing enemy's goods in neutral vessels as a right under the law of nations, they have always endeavoured to incorporate the privilege of *free ships, free goods* in their treaties; and though the Declaration of Paris is only binding upon those who accede to it yet there is little probability that any nation will hereafter enforce rules of capture in conflict with its principles. The principle was observed throughout the Crimean war, and in the Civil war of the United States. The practical result is that ships belonging to a neutral nation are free from capture and hostile interference of any sort, unless engaged in carrying contraband of war to or belonging to one of the belligerents. The right of search has however, always belonged, and still belongs to each of the belligerents.

What is contraband of war.

By the term contraband is understood a class of articles of commerce which neutrals are prohibited from furnishing to any one of the belligerents for the reason that, by so doing, injury is done to the other belligerent. There is no difference as to this general rule, but great is the disagreement as regards the articles which may properly be regarded as contraband. All are agreed that implements and munitions of war and articles which in their actual condition, are of immediate use for warlike purposes are to be deemed contraband, but beyond this there is a diversity of opinion. British authorities have usually favoured the extension of the list so as to include:—arms and machinery for manufacturing ammunition and materials for ammunition, gunpowder, guncotton, military equipments, clothing and stores; naval stores such as masts, spars, rudders, ship timber, cordage, sailcloth, pitch and tar, marine engines and the component parts thereof, and provisions and liquors for the consumption of army or navy. The foregoing may be regarded as *absolutely* contraband: telegraphic and railway materials, coals, hay, horses, tallow, and timber as being *conditionally* contraband. Articles which may be or are used for purposes of war or peace, according to circumstance, are contraband only when actually destined to the military or naval use of a belligerent.

In 1859 and 1870 France maintained that coal was not contraband of war, whilst Germany, on the other hand, strongly remonstrated against the export of coal from England to France during the Franco-German war; it seems probable that in future coal will or will not be treated as contraband, according as its destination and probable use is for belligerent or pacific purposes. During the recent war between Russia and Japan steam coal destined for a port of a belligerent was regarded on both sides as being absolute contraband.

(3.) Neutral goods free on enemy's ships.

Though the principle as to neutral goods being free on an enemy's ship is apparently most favourable to neutrals, a neutral goods owner may yet be exposed to very serious risks and losses if he has the temerity to entrust his goods to a ship belonging to one of the belligerents. All goods found in an enemy's ship are presumed to be enemy's property, and if the character of the ship is certainly hostile the neutral character of the goods must be proved by documents on board at the time of capture, and no further proof is allowed; in other cases a reasonable time is allowed for the production of further proof. In any case the goods owner cannot claim for loss arising from detention or transhipment, and he cannot make any claim for loss or damage resulting from warlike operations—*e.g.*, in case of a general order given to destroy an enemy's ship without bringing them in for condemnation. If the circumstances of the case made such an order justifiable, no compensation could be claimed by the neutral owner of goods so destroyed.

(4.) Blockade.

The necessity for a proper maintenance of a blockade had been previously laid down by both English and American courts; both required that a place shall be watched by a force sufficient to render it most probable that ships wrongfully attempting to enter or leave the port blockaded would be captured. The Declaration of Paris aimed at the abolition of mere "paper" blockades, *i.e.*, blockades depending for their virtue more upon the edict of a government than on the presence of an effective naval force on the coast blockaded.

Russo-Japanese War.

During the recent war between Russia and Japan captures on the one side or the other raised many questions of interest in connection with the right of search, as to what is or is not contraband, and as to the destruction of neutral ships engaged in the carriage of goods to a port of a belligerent.

Throughout the war Japan exercised a surprising measure of restraint in the matter of interference with neutral shipping. The captures of British ships engaged in carrying steam coal from the U.K. to a Russian destination in the East were absolutely justified, and it is somewhat strange that underwriters in London should have thought it worth while to appeal to Yokohama from the decrees of the Prize Courts at Sasebo and elsewhere. It is probably correct to say that every capture and condemnation insisted upon by Japan would in corresponding circumstances have had the confirmation of a Prize Court in this country.

The rights of neutral shipping were from the outset disregarded by Russia. Declarations were made *re* contraband such as no jurist of reputation could attempt to justify. The Russian Prize Courts were dilatory in their operations and almost invariably maintained the official view regardless of the ordinary rules of evidence and procedure and of well recognised principles of law. Mere suspicion as to hostile destination and the probable use of goods shipped in neutral bottoms was regarded as justification for destruction both of the ship and goods.

Experience of Russian tactics during the last naval war only proves—if indeed proof were needed—that unless a neutral is prepared to fight on a question of so-called international law, an obstinate and reckless belligerent can do any amount of damage to that neutral's property without remedy of any kind. Our Foreign Office, for reasons only partly disclosed, has not and is not now prepared to insist on compensation in connection with some British claims which are really unanswerable: whether it be a too generous consideration for a nation already in desperate economic straights, or a suspicion that some day England may be in Russia's position, and that it is undesirable to create a precedent, sure it is that Russia, having determined not to pay, England is accepting her decision as final.

The following cases are typical of the course of action adopted by the Russian Prize Courts during the war with Japan:—

The Calchas.

(1.) The *Calchas*, owned by Alfred Holt & Co., loaded a cargo of flour, cotton and heavy timber at Puget Sound for discharge at ports in Japan and China. On the 25th July, 1904, the *Calchas* was seized by a Russian squadron, and on the ground that she was carrying contraband was taken into Vladivostock. The Prize Court held that the flour being destined for Japan was contraband, and ordered the discharge and confiscation of this flour: further, that after discharge of this portion of the cargo the *Calchas* should be permitted to proceed on her voyage to Hong Kong. The Russian Crown Advocate was not content with this and appealed, one of the grounds being that because the mail matter on the *Calchas* contained financial information of importance there should be a condemnation of the ship. In the absence of evidence to the effect that the flour was destined for the use of the belligerent forces the condemnation was wholly bad, and as to the mails point, the whole trend of modern thought on the subject has been to exempt neutral ships carrying mails in ordinary course from any penal consequence or even interference save under most exceptional circumstances.

The Allanton.

(2.) On the 27th June, 1904, the ss. *Allanton*, of Belfast, whilst on a voyage from Muroran to Singapore with a cargo of coal, was held up in the Sea of Japan by a Russian cruiser. Her papers were examined and not being considered satisfactory by the captain of the cruiser she was taken to Vladivostock as a

prize. Immediately on her arrival at Vladivostock and before the Prize Court could consider the case the coal was discharged and taken possession of by the Russian authorities. The steamer was subsequently condemned by the Prize Court as a naval prize on the ground that she was carrying contraband of war. As a matter of fact the cargo was part of a quantity of 50,000 tons bought by Paterson, Symons & Co., of Singapore, from Japanese coal shippers. The B/L for the cargo had been sent on to Singapore to await the arrival of the ship, and the correspondence between Paterson, Symons & Co. and the shippers at Muroran showed conclusively that the destination of the ship was Singapore and not otherwise. The facts of the case were not fully before the Prize Court at the time of steamer's condemnation, but they were subsequently put before the Russian Government with a view to the steamer being released. No useful result being secured, an appeal against the Prize Court decision was made and came on for hearing on the 9th October, 1904. The Russian Government did not here attempt to justify the condemnation of the ship, and she was consequently released. She sailed from Vladivostock on the 9th November, 1904, after a detention of about five months. The Foreign Office has declined to press the owner's claim for compensation (about £12,000) against the Russian Government arising out of the detention of the ship.

The Knight Commander.

(3.) On the 24th July, 1904, while the ss. *Knight Commander*, of Liverpool, was on a voyage from New York to Shanghai and Yokohama with a general cargo consisting mainly of flour, rice, railway material and materials for bridges, she was overhauled by a Russian cruiser off the Peninsula of Idzu. After an examination of the ship's papers the Russian admiral decided that the cargo was a contraband cargo destined for a Japanese port, and having removed the master and crew of the British steamer to a Russian warship the *Knight Commander* was fired at and sunk. The passengers and crew were thereafter placed on board another British ship and landed at Yokohama. The *Knight Commander* was subsequently adjudged a lawful prize by the Vladivostock Prize Court on the ground that she was conveying contraband of war, and this decision was confirmed by the Court of Appeal at St. Petersburg. There was no evidence that any part of the cargo per *Knight Commander* was destined for the use of the Japanese forces ashore or afloat.

DECLARATION OF LONDON (1909).—(*a*.)

Between December, 1908, and February, 1909, an International Naval Conference was held in London, on the invitation of the British Government, with a view to arriving at an agreement as to what are the generally recognised rules of international law, upon which the decisions of an International Prize Court could and would be based. The advantages which an agreement as to the rules in question would secure, both as regards peaceful commerce and as regards the belligerents and their diplomatic relations with neutral governments, are sufficiently obvious.

Germany, the United States, France, Spain, Italy, Japan, Russia, Austria, and the Netherlands were all adequately represented at the Conference.

The Signatory Powers were agreed that the rules hereinafter set out correspond in substance with the generally recognised principles of international law:—

Blockade in Time of War.

1. A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

2. In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline.

3. The question whether a blockade is effective is a question of fact.

4. A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

5. A blockade must be applied impartially to the ships of all nations.

6. The commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.

(*a*) No formal assent has yet been given to the Declaration of London by this Country. Unfortunately this highly technical document has got into the arena of party politics, and opinions are freely and dogmatically expressed by many who have gleaned their acquaintance with its provisions from leading articles and newspaper correspondence. Whether or not this Declaration is ultimately agreed to, it is certain it will hereafter be referred to in Prize Courts and elsewhere as expressing the considered judgment of the joint representatives of the great Maritime Powers in 1909 on many a point hitherto highly controversial. The right, in certain circumstances, conceded to one belligerent to capture foodstuffs which are destined (whether in a neutral bottom or otherwise) to the other belligerent has been vigorously attacked, but does any one really think that Germany, if at war with this Country, would not exercise that right—Declaration or no Declaration. Critics and opponents of the Declaration of London rather lose sight of certain elementary matters—(1) That war is war—that a nation goes to war to gain the victory and not to teach humanitarian principles—that, in any event and at the worst, a slow and partial process of starvation is certainly not more cruel than a bombardment, when men, women and children are indiscriminately maimed and killed. (2) That a clear appreciation by both neutrals and belligerents of their rights and liabilities in time of war is a great safeguard in the direction of preventing nations, other than those belligerent, being drawn into the struggle. Is it not better to give up something on a compromise than to risk all the uncertainties now attending the trading of neutrals with either of the belligerents? (3) That there is no likelihood of material disadvantage to England from any of the provisions in the Declaration so long as her Navy is predominant and is sufficient to guard her trade routes. The idea that England with a defeated Navy could hereafter benefit by *not* having agreed in 1911 to the Declaration of London is repellent alike to reason and good sense.

7. In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

8. A blockade, in order to be binding, must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16.

9. A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies:—

1. The date when the blockade begins;
2. The geographical limits of the coastline under blockade;
3. The period within which neutral vessels may come out.

10. If the operations of the blockading Power, or of the naval authorities acting in its name, do not tally with the particulars, which, in accordance with Article 9 (1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

11. A declaration of blockade is notified—

1. To neutral Powers, by the blockading Power by means of a communication addressed to the Government direct, or to their representatives accredited to it;
2. To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible.

12. The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

13. The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Article 11.

14. The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

15. Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

16. If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour, and the geographical position of the vessel at the time.

If through the negligence of the officer commanding the blockading force no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

17. Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective.

18. The blockading forces must not bar access to neutral ports or coasts.

19. Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.

20. A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

21. A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

Contraband of War.

22. The following articles may, without notice, be treated as contraband of war, under the name of absolute contraband :—

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
2. Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
3. Powder and explosives specially prepared for use in war.
4. Gun-mountings, limber boxes, limbers, military waggons, field forges, and their distinctive component parts.
5. Clothing and equipment of a distinctively military character.
6. All kinds of harness of a distinctively military character.
7. Saddle, draught, and pack animals suitable for use in war.
8. Articles of camp equipment, and their distinctive component parts.
9. Armour plates.
10. Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.
11. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

23. Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

24. The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband :—

1. Foodstuffs.
2. Forage and grain, suitable for feeding animals.
3. Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
4. Gold and silver in coin or bullion ; paper money.
5. Vehicles of all kinds available for use in war, and their component parts.
6. Vessels, crafts, and boats of all kinds ; floating docks, parts of docks and their component parts.
7. Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.
8. Balloons and flying machines and their distinctive component parts, together with accessories and articles recognisable as intended for use in connection with balloons and flying machines.
9. Fuel ; lubricants.
10. Powder and explosives not specially prepared for use in war.
11. Barbed wire and implements for fixing and cutting the same.
12. Horseshoes and shoeing materials.
13. Harness and saddlery.

14. Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

25. Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

26. If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

27. Articles which are not susceptible of use in war may not be declared contraband of war.

28. The following may not be declared contraband of war :—

1. Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.
2. Oil seeds and nuts ; copra.
3. Rubber, resins, gums, and lacs ; hops.
4. Raw hides and horns, bones, and ivory.
5. Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
6. Metallic ores.
7. Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
8. Chinaware and glass.
9. Paper and paper-making materials.
10. Soap, paint and colours, including articles exclusively used in their manufacture, and varnish.
11. Bleaching powder, soda ash, caustic soda, salt cake, ammonia, and sulphate of ammonia and sulphate of copper.
12. Agricultural, mining, textile, and printing machinery.
13. Precious and semi-precious stones, pearls, mother-of-pearl, and coral.
14. Clocks and watches, other than chronometers.
15. Fashion and fancy goods.
16. Feathers of all kinds, hairs, and bristles.
17. Articles of household furniture and decoration ; office furniture and requisites.

29. Likewise the following may not be treated as contraband of war :—

1. Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.
2. Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

30. Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transhipment or a subsequent transport by land.

31. Proof of the destination specified in Article 30 is complete in the following cases :—

1. When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.
2. When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before

reaching the neutral port for which the goods in question are documented.

32. When a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.

33. Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

34. The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband,

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this article may be rebutted.

35. Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

36. Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

37. A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

38. A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

39. Contraband goods are liable to condemnation.

40. A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

41. If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

42. Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

43. If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or

of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

44. A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

Unneutral Service.

45. A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband :—

1. If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy.
2. If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present Article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the Power to which such port belongs, provided that such notification was made in sufficient time.

46. A neutral vessel will be condemned and, in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel :—

1. If she takes a direct part in the hostilities ;
2. If she is under the orders or control of an agent placed on board by the enemy Government :
3. If she is in the exclusive employment of the enemy Government ;
4. If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by the present Article, goods belonging to the owner of the vessel are likewise liable to condemnation.

47. Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel.

Destruction of Neutral Prizes.

48. A neutral vessel which has been captured may not be destroyed by the captor ; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

49. As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

50. Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

51. A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49. If he fails to do this, he must compensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

52. If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled.

53. If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

54. The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under Article 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the logbook of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the formalities duly carried out, the master must be allowed to continue his voyage.

The provisions of Articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

Transfer to a Neutral Flag.

55. The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transaction is void. This presumption may be rebutted.

When the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

56. The transfer of an enemy vessel to a neutral flag, effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

There, however, is an absolute presumption that a transfer is void—

1. If the transfer has been made during a voyage or in a blockaded port.
2. If a right to repurchase or recover the vessel is reserved to the vendor.
3. If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing, has not been fulfilled.

Enemy Character.

57. Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

The case where a neutral vessel is engaged in a trade which is closed in time of peace, remains outside the scope of, and is in no wise affected by, this rule.

58. The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

59. In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.

60. Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded.

If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognised legal right to recover the goods, they regain their neutral character.

Convoy.

61. Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained by search.

62. If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

Resistance to Search.

63. Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

Compensation.

64. If the capture of a vessel or of goods is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods.

(20.)— LETTER OF INSTRUCTIONS TO PURSER, A.D. 1556.

TRADING relations between England and N. Russia were first established about A.D. 1553 by means of an expedition commanded by Richard Chancellor, of the *Edward Bonaventure*. On the third and succeeding voyages the pursers received a letter of instruction so admirably drafted and so well suited in many of its details to ship-management even to-day that the letter is printed below practically *in extenso*:—

Inventory of ship's stores.

1. First, you shall, before the ship doth begin to lade, go aboard, and shall there take and write one inventory by the advice of the master or of some other principal officer, there aboard, of all the tackle, apparel, cables, anchors, ordnance, chambers, shot powder, artillery, and of all other necessaries whatsoever doth belong to the said ship; and the same justly taken, you shall write in a book, making the said master or such officer privy of that which you have so written, so that the same may not be denied when they shall call account thereof. That done, you shall write a copy of the same with your own hand, which you shall deliver before the ship shall depart for the voyage to the company's book-keeper, here to be kept to their behalf, to the end that they may be justly answered the same when time shall require; and this order to be seen and kept every voyage orderly by the pursers of the company's own ship in any wise.

Tally in at port of loading.

2. *Also when the ship beginneth to lade you shall be ready aboard with your book to enter such goods as shall be brought aboard to be laden for the company, packed or unpacked, taking the marks and numbers of every pack,* bardell, truss or packet coronoya, chest, vat, butt, pipe, puncheon, whole barrel, half barrel, firkin or other cask, mounde or basket, or any other thing which may or shall be packed by any other manner of way or device. And first, all such packs or trusses, &c., as shall be brought aboard to be laden not marked by the company's mark, you shall do the best to let that the same be not laden, and to inquire diligently to know the owners therof, if you can, and what commodity the same is that is so brought aboard to be laden; if you cannot know the owners of such goods learn what you can thereof, as well making a note in your book, as also to send or bring word thereof to the agent, and to some one of the four merchants with him adjoined so speedily as you can, if it be here laden, or to be laden in this river, being not marked with the company's mark, as is aforesaid; and when the said ship hath received in all that that the company's agent will have laden, you shall make a just copy of that which is laden, reciting the parcels, the marks and numbers of everything plainly, which you shall likewise deliver to the said book-keeper to the use aforesaid.

Mails.

3. Also, when the ship is ready to depart, you shall come for your cockets and letters to the agent, and shall show him all such letters as you have received of any person or persons privately or openly, to be delivered to any person or persons in Russia or elsewhere, and also to

declare if you know any other that shall pass in the ship either master or mariner that hath received any letters to be privately delivered to any there, directed from any person or persons other than from the agent here to the agent there, which letters so by you received you shall not carry with you without you be licensed so to do by the agent here, and some of the four merchants as is aforesaid; and such others as do pass, having received any privy letters to be delivered, you shall all that in you lieth let the delivery of them at your arrival in Russia; and also if you have, or do receive, or shall know any other that doth or hath received any goods or ready money to be employed in Russia, or to be delivered there to any person or persons from any person or persons other than such as be the company's goods, and that under their mark you shall, before the ship doth depart, declare the same truly to the said agent and to some of the other merchants to him adjoined, as it is before declared.

Stowaways. 4. Also, when the ship is ready to depart, and hath the master and the whole company aboard, *you shall diligently forsee and take heed that there pass not any privy person or persons other than such as be authorised to pass in the said ship* without the licence and warrant of one of the governors and of the assistants, for the same his passage to be first shown. And if there be any such person or persons that is to pass and will pass without showing the same warrant, you shall let the passage of any such to the uttermost of your power; and for that there may no such privy person pass under the cloak and colour of some mariner, you shall upon the weighing of your ship's anchor call the master and the mariners within board by the names, and that by your books, to the end that you may see that you have neither more nor less, but just the number for the voyage.

Port of refuge. 5. Also, *you must have in remembrance that if it shall chance the ship to be put into any harbour in this coast by contrary winds or otherwise in making the voyage, to send word thereof from time to time* as the case shall require by your letters in this manner: "To Master J. B., Agent for the Company of the New Trades in S in London."—If you do hire any to bring your letters, write that which he must have for the postage. And for your better knowledge and learning you shall do very well to keep a daily note of the voyage both outwards and homewards.

Daily prayers. 6. And principally *see that you forget not daily in all the voyage, both morning and evening, to call the company within board to prayer, in which doing you shall please God, and the voyage will have the better success thereby and the company prosper the better.*

Economy. 7. Also in calm weather and at other times when you shall fortune to come to anchor in the seas during the voyage, you shall for the company's profit, and *for good husbanding of the victuals aboard, call upon the boatswain and other of the company to use such hooks and other engines as they have aboard to take fish with,* that such fish so taken may be eaten for the cause aforesaid; and if there be no such engines aboard, then to provide some before you go from hence.

Procedure at port of discharge. 8. And when God shall send you in safety into the Bay of St. Nicholas at anchor you shall go ashore with the first boat that shall depart from the ship, taking with you such letters as you have to deliver to the agent there, and if he be not there at your coming ashore, then send the company's letters to Colmogro to him by some sure mariner or otherwise, as the master and you shall think best; but go not yourself at any hand,

nor yet from aboard the ship unless it be ashore to treat with the agent for the lading of the ship that you be appointed in, which you shall apply diligently to have done so speedily as may be. And for the *discharging of the goods therein in the bay, to be carried from thence, see that you do look well to the unlading thereof. that there be none other goods sent ashore than the company's and according to the notes entered in your book as aforesaid;* if there be inquire diligently for whom they be and what goods they be, noting who is the receiver of the said goods, in such sort that the company may have the true knowledge thereof at your coming home.

Private dealings of officers, &c.

9. Also there ashore, and likewise abroad, you shall spy and search as secretly as you may, to learn and know what bargaining, buying and selling there is with the master and mariners of the ship and the Russians, or with the company's servants there; and that which you shall perceive and learn you shall keep a note thereof in your book, secretly to yourself, which you shall open and disclose at your coming home to the governors and the assistants in such sort as the truth of their secret trades and occupyings may be revealed and known. You shall need always to have Argus' eyes, to spy their secret packing and conveyance, as well on land as aboard the ship, of and for such furs and other commodities as yearly they do use to buy, pack and convey hither. If you will be vigilent and secret in this article you cannot miss to spy their privy packing one with another, either on shore or aboard the ship; work herein wisely, and you shall deserve great thanks of the whole country.

Loading homeward cargo.

10. Also *at the lading again of the ship you shall continue and abide aboard to the end that you may note and write in your book all such goods and merchandise as shall be brought and laden,* which you shall orderly note in all sorts as heretofore, as in the second article partly it is touched; and in any wise put the master and the company in remembrance to look and forsee substantially to the roomaging of the ship, by fair means or threats, as you shall see and think will serve for the best.

11. Thus, when the ship is fully laden again and all things aboard in good order and that you do fortune to go ashore to the agent for your letters and despatch away, you shall demand whether all the goods be laden that were brought thither, and to know the truth thereof you shall repair to the company's storehouse there at St. Nicholas to see if there be any goods left in the said storehouse; if there be you shall demand why they be not laden, and to note what kind of goods they be that be so left, and seeing any of the ships there not fully laden you shall put the agent in remembrance to lade these goods so left, if any such be to be laden, as is aforesaid. And thus, God sending you a fair wind, to make speed and away.

At homeward port of call.

12. Finally, when God shall send you to arrive again upon this coast in safety, *either at Harwich or elsewhere, go not you ashore, if you may possible, to the end that when you be gone ashore there may no goods be sent privity ashore to be sold, or else to be sold aboard the ship in your absence, but keep you still aboard if you can by any means* for the causes aforesaid, and write the company a letter from the ship of your good arrival which you may convey to them by land by some boy or mariner of the ship or otherwise as you shall think best, and likewise when God shall send you and the ship into the river here, do not in any wise depart out of the ship that you be in until the company do send some other aboard the ship in your stead and place, to keep the said ship in your absence.

A HYMN FOR THE SEA. (*a*)

Who fathoms the Eternal Thought?
Who talks of scheme and plan?
The Lord is God! He needeth not
The poor device of man.

I walk with bare, hushed feet the ground
Ye tread with boldness shod;
I dare not fix with mete and bound
The love and power of God.

Ye praise His justice; even such
His pitying love I deem:
Ye seek a king; I fain would touch
The robe that hath no seam.

I see the wrong that round me lies,
I feel the guilt within;
I hear, with groan and travail cries,
The world confess its sin.

Yet, in the maddening maze of things,
And tossed by storm and flood,
To one fixed trust my spirit clings;
I know that God is good!

I know not what the future hath
Of marvel or surprise,
Assured alone that life and death
His mercy underlies.

No offering of my own I have,
Nor works my faith to prove;
I can but give the gifts He gave,
And plead His love for love.

And so beside the Silent Sea
I wait with muffled oar;
No harm from Him can come to me
On ocean or on shore.

I know not where His islands lift
Their fronded palms in air;
I only know I cannot drift
Beyond His love and care.

O brothers! if my faith is vain,
If hopes like these betray,
Pray for me that my feet may gain
The sure and safer way.

And thou, O Lord! by whom are seen
Thy creatures as they be,
Forgive me if too close I lean
My human heart on Thee!

(*a*) From Whittier's "The Eternal Goodness."

A PRAYER FOR ALL. (*a*)

Andrew Rykman 's dead and gone ;
You can see his leaning slate
In the graveyard, and thereon
Read his name and date.

"*Trust is truer than our fears*,"
Runs the legend through the moss,
"*Gain is not in added years*,
Nor in death is loss."

What he was and what he is.
They who ask may haply find,
If they read this prayer of his
Which he left behind.

Pardon, Lord, the lips that dare
Shape in words a mortal's prayer, !
Prayer, that, when my day is done,
And I see its setting sun
Father ! I may come to Thee
Even with the beggar's plea,
As the poorest of Thy poor,
With my needs, and nothing more.

. . . . .

Whatsoe'er I fain would boast
Needs Thy pitying pardon most.
Thou, O Elder Brother ! who
In Thy flesh our trials knew,
Thou, who has been touched by these
Our most sad infirmities,
Thou alone the gulf canst span
In the dual heart of man,
And between the soul and sense
Reconcile all difference,
Change the dream of me and mine
For the truth of Thee and Thine,
And, through chaos, doubt and strife,
Interfuse Thy calm of life,
Haply, thus by Thee renewed,
In Thy borrowed goodness good,
Some sweet morning yet in God's
Dim, aeonian periods,
Joyful I shall wake to see
Those I love who rest in Thee,
And to them in Thee allied
Shall my soul be satisfied.

. . . . .

Scarcely Hope hath shaped for me
What the future life may be,
Other lips may well be bold ;
Like the publican of old,
I can only urge the plea,
" Lord be merciful to me !"
Nothing of desert I claim.
Unto me belongeth shame.

Let the lowliest task be mine.
Grateful, so the work be Thine ;
Let me find the humblest place
In the shadow of Thy grace :
Blest to me were any spot
Where temptation whispers not.
If there be some weaker one,
Give me strength to help him on ;
If a blinder soul there be,
Let me guide him nearer Thee.
Make my mortal dreams come true
With the work I fain would do ;
Clothe with life the weak intent,
Let me be the thing I meant ;
Let me find in Thy employ
Peace that dearer is than joy ;
Out of self to love be led
And to heaven acclimated,
Until all things sweet and good
Seem my natural habitude.

. . . . .

Thus did Andrew Rykman pray.
Are we wiser, better grown,
That we may not, in our day,
Make his prayer our own ?

(*a*) From Whittier's "Andrew Rykman's Prayer."

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